

MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY

Santa Fe, New Mexico

April 30, 2003

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico was called to order on this date at approximately 4:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Mayor Larry A. Delgado
Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

Councilor Matthew E. Ortiz

APPROVAL OF AGENDA

City Manager Jim Romero stated that the appellant and applicant have requested that the following item on the Evening Session Agenda be postponed to either May 14 or May 28:

G3) Case #AB-2002-03. 127 Duran Street Appeal.

City Clerk Yolanda Vigil asked that the item be postponed to a date specific; if the item is postponed to May 14 and is not ready for a hearing, it can then be postponed again.

Councilor Lopez moved approval of the Agenda, as amended, with Item G3 postponed to May 14. Councilor Chavez seconded the motion, which passed 7-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Lopez, Councilor Pfeffer and Councilor Wurzburger voting for, and none against.

APPROVAL OF CONSENT CALENDAR

Upon motion by Councilor Lopez, seconded by Councilor Chavez, the Consent Calendar, as amended, was approved on the following Roll Call vote:

For: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Wurzburger.

Against: None.

- a) Bid No. 03/29/B — Liner Replacement for Salvador Perez Pool; Pool Pro.
- b) Bid No. 03/32/B — Santa Fe Municipal Airport Terminal Building Renovations; Jack B. Henderson Construction Co., Inc.
- c) Bid No. 03/40/B — Maez Road Storm Drain Project; Khani Company.
 - 1. Request for Approval of Budget Transfers — Various Funds.
- d) Bid No. 03/45/B — Botulph Road Improvement Project; A.S. Horner, Inc.
 - 1. Request for Approval of Budget Transfers — Various Project Funds.
- e) Bid No. 03/50/B — Traffic Line Paint for Public Works Department; J. H. Supply.
- f) Request for Approval of License Agreement — Premise Relocation of Railyard Property; Santa Fe Farmers Market, Inc.
- g) Request for Approval of Amendment No. 1 to Grant Agreement — Santa Fe Municipal Airport Terminal Renovations; State Highway and Transportation Department.
 - 1) Request for Approval of Budget Increase — Project Fund.
- h) Request for Approval of Grant Award — Santa Fe Trails Santa Fe Ride Program; Federal Transit Administration.

- i) Request for Approval of Grant Award — ArtWorks Program; Thaw Charitable Trust.
 - a. Request for Approval of Budget Increase/Transfer — Grant Fund/ Quality of Life Fund.
- j) Request for Approval of Amendment No. 1 — Cash in Lieu of Commodities Contract; New Mexico Economic Development District Area Agency on Aging (NCMEDD)
 - a. Request for Approval of Budget Increase — Grant Fund.
- k) Request for Approval of 2002 Laws of New Mexico Contracts — State of New Mexico State Agency on Aging:
 - 1) Vehicles for Division of Senior Services
 - 2) Mary Esther Gonzales Senior Center Renovations
 - 3) Equipment and Appliances for Division of Senior Services
 - 4) Request for Approval of Budget Increases — Grant Fund
- l) Request for Approval of Procurement Under State Price Agreements — Vehicles for Senior Services:
 - 1) Rich Ford
 - 2) Auge Sales
 - 3) Reliable Chevrolet
 - 4) Galles Chevrolet
- m) Request for Approval of Emergency Procurement — Air Conditioning System for Computer Room; Integrity Networking Systems, Inc.
 - 1) Request for Approval of Budget Transfer — ITT Department Fund
- n) Request for Approval of Procurement Under Two State Price Agreements — Intersection and Traffic Signal Maintenance Materials for Transportation Division; Various Project Funds.
- o) Request for Approval of Budget Increase — Cerrillos Road and Camino Carlos Rey Intersection Improvements; Developers of La Cieneguita del Camino Real Subdivision Letter of Credit.
- p) Request for Approval — Free Transfers From Park and Ride Transportation System to Santa Fe Trails Buses; New Mexico State Highway and Transportation Department.
- q) Request for Approval of Joint Powers Agreement — Jobs Access and Reverse Commute Program (JARC) for Transit Department; New Mexico Human Services Department.

- 1) Request for Approval of Memorandum of Agreement — Regional Operations Provider for JARC Program; Rio Arriba County/Los Valles Transit.
- r) Request for Approval of Second Amendment to Third Supplemental Cooperative Project Agreement — Cerrillos Road Reconstruction Project; New Mexico State Highway and Transportation Department.
 - 1) Request for Approval of Budget Transfer — Project Fund.
- s) Request for Approval of Amendment No. 1 to Professional Services Agreement — Cerrillos Road Reconstruction Project, Airport to Richards Avenue; Parsons Brinckerhoff, Inc.
- t) Request for Approval of Procurement Under State Price Agreement — Slurry Seal Treatment for Paved Street Rehab Program; IPR Ltd.
 - 1) Request for Approval of Recycled Asphalt Paving Program — West Zia Road, General Sage and Indian Ridge
- u) [Removed for discussion by Councilor Wurzburger.]
- v) Request for Approval of Amendment No. 1 to Professional Services Agreement — Old Pecos Trail Project; Gannet Fleming West, Inc.
 - 1) Request for Approval of Budget Transfers — Project Fund.
- w) Request for Approval of Amendment No. 2 to Professional Services Agreement — Construction Engineering and Management Services; Louis Berger Group, Inc.
- x) Request for Approval of Amendment No. 3 to Agreement Between Owner and Architect — Architectural Design Services for Airport Terminal Renovation; Molzen-Corbin and Associates.
- y) CONSIDERATION OF RESOLUTION NO. 2003-41. A Resolution Relating to a Request for Approval of Quarterly Budget Adjustments for FY 2003/2003.
- z) Request for Approval to Publish Notice of Public Hearing for May 14, 2003 City Council Meeting:

Consideration of Adoption of Consolidated Plan.

- aa) Request for Approval to Publish Notice of Public Hearing on May 28, 2003 City Council Meeting:
 - 1) BILL NO. 2003-11: An Ordinance Amending Sections 25-2.7, 25-5.7 and Exhibits C and D to Section 25-5.7 SFCC 1987 Regarding Irrigation Restrictions for Public Parks, Public School Athletic Fields and Roadside Landscapes. (Councilor Chavez, Councilor Lopez, Councilor Wurzbarger)
 - 2) BILL NO. 2003-12: An Ordinance Amending Section 14-8.6 B(9)(b) SFCC 1987 Relating to Off-street Parking in the Business Capitol District, and Establishing a Fee in Lieu of Parking Program to be Devoted to Parking Structures and Multimodal Improvements. (Councilor Bushee)
- bb) [Removed by Councilor Bushee for discussion.]
- cc) Request for Approval of Plaza Task Force Recommendations.
- dd) Request for Approval of Schedule of Events for the 291st Fiesta de Santa Fe.
- ee) Request for Approval of a Time Extension of a Temporary License Agreement With the City of Santa Fe for the Academy of Technology and the Classics Charter School.

APPROVAL OF MINUTES: April 9, 2003

Councilor Bushee moved approval of the April 9 meeting minutes, as submitted. Councilor Lopez seconded the motion, which passed 6-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Lopez and Councilor Pfeffer voting for, and none against. [Councilor Wurzbarger was not present during this action.]

PRESENTATIONS

Employee of the Month for April 2003 — Mr. Shannon Jones, Water Systems Operator, Water Treatment Plant; Sangre de Cristo Water Division.

Mr. Jones received a check for \$200 from the Employee Benefit Committee and a certificate for dinner at Café Dominique.

Mayor Delgado stated that Mr. Jones, utilizing his knowledge and expertise in water treatment facilities, designed and built a relocation project for \$1,500 — something that would ordinarily have cost the City \$30,000, and also has designed and built other projects that have saved the City money.

Introduction of Tom Maguire, CAT Planner

CVB director Darlene Griego introduced Mr. Maguire, who was hired after an 11-month search. She said he has lived in Santa Fe for 15 years and has been associated with the arts during the entire time, working for the Santa Fe Desert Chorale, Maria Benitez, and most recently the Chamber Music Festival.

Mr. Maguire said he was delighted to be in this position, and thanked the Council for both the challenge and the opportunity. He remarked, “The CAT Plan is quite a plan.... It is very broad, very bold, and very far-reaching and well thought out.”

Proclamation: “The Lensic Santa Fe Performance Arts Center Day”

Representatives were not present, and this item was deferred to later in the meeting.

CONSENT CALENDAR DISCUSSION

Request for Approval of Professional Services Agreement — Security Guard Services for Water Department (RFP No. 2003/21/P); Chavez Security, Inc.

Councilor Wurzbarger asked Water Resources Management director Gary Martinez to clarify why the compensation on this contract is so significantly higher than previously.

Mr. Martinez explained that the contract was expanded by about \$100,000, to \$262,000, to address homeland security and the recently adopted bioterrorism law. He said there have also been vandalism problems in the Buckman area, so enforcement there has to be increased. He added that the trail patrol would have to be increased because the forest trails are opening up in the area of the Watershed, which needs to be protected carefully this summer.

Councilor Wurzbarger moved for approval. Councilor Heldmeyer seconded the motion.

Councilor Lopez asked if there were any protests to this recommended bid award, and Mr. Martinez responded that there were not.

Councilor Lopez said she heard recently about a procurement involving security services where there was a protest. She stated, "I think the concern that I have is that we do all these separate contracts for security, and maybe that's not bad, but it seems to me a lot of times we're splitting it up. What I would rather sometimes see us do is advertise all of our security together and maybe make some multiple awards — maybe have more than one company if in the rating that appears to be okay."

Councilor Lopez pointed out, for instance, that a recently named "businesswoman of the year," who is the daughter of a friend of hers, owns a new security business. Councilor Lopez said she thought it important to allow a chance for new women-owned and minority-owned businesses to be able to get their foot in the door. She said this might be one way of getting a better rate, too.

Councilor Bushee stated that, as she understood it, Chavez Security came in with the highest rating with regard to security in the Watershed in particular. She added that no one is precluded from bidding in this process, so she thought it fair. She said she knew the City received one protest letter trying to imply that it wasn't a fair process, and assumed the City looked into it.

City Manager Jim Romero stated that the City responded to the letter after looking into it and talking with the Finance director.

The motion passed on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee.

Against: None.

Request for Approval of Sole Source Procurement and Professional Services Agreement — Radio Broadcasting; Northern New Mexico Radio Foundation, Inc.

1) Request for Approval of Budget Increase — General Fund.

Councilor Bushee stated that radio station KRSN (1490 AM), which has covered a lot of the City's elections and other events for at least the last ten years, usually at no cost, feels the City has followed an unfair process in

awarding KSFR a sole source contract. She said KRSN would like to bid for some of this coverage and asked that the process be opened up.

ITT director Rick Carlisle explained that staff has recommended this sole source contract because KSFR is the only FCC-licensed radio station in the city that is not-for-profit and also provides the same type of services on Channel 8, the public access TV station. He said the other radio stations in town are all for-profit and commercial and would require payment for such services. He added that the FCC license is issued to the Santa Fe Community College, where the City already has established contracts with KSFR.

Councilor Lopez explained that, at the last budget hearing, she asked the City Manager for a report on how much it costs the City to run various print ads in the newspaper. She said, for instance, that it cost the City \$10,000 to run ads announcing a 75¢ fee increase.

Councilor Lopez said it was her intent that a percentage of the monies now being dedicated to print advertising to ratepayers and others, which is required by the Open Meetings Act, be put into broadcasting. She commented, "That's the rub, because some of the for-profit stations give extensive coverage to what's happening in our community, and somehow there's the feeling that we're going to sole-source to one entity and kind of ignore the huge contributions that the other stations make day in and day out." She said she believed many people who listen to the radio don't necessarily read the newspaper.

Councilor Lopez said there is no reason why the City cannot advertise rate increases on the Spanish radio station here, too. She stated that KRSN and other stations reach out to different audiences as well, and she would like to see this spread out a little more to make sure the City is effectively reaching all sectors of the community.

Councilor Lopez pointed out that the small amount of money being awarded to KSFR will allow them to have a full time staff person; and in doing that, and in injecting that kind of stability into their organization, they will then become eligible for all other kinds of foundation money.

Councilor Lopez stated that KSFR is also creating a community advisory board and is seeking to expand its membership.

Councilor Lopez continued, "So I don't see this as a situation where one group is going to win and other groups feel that they lose. I think it's time to make this support known, and it's time also that we start contracting with media other than print media to get the message of the City out there."

Councilor Lopez moved for approval. Councilor Coss seconded the motion.

Responding to questioning from Councilor Bushee, Mr. Carlisle stated that the sole source declaration was made because of the type of license KSFR has, which would not have been possible with any other radio station here.

Councilor Bushee commented that she did not believe awarding a contract to allow a full time employee at KSFR was part of the City's long-range goal in offering widespread coverage through other radio stations. She recalled the City's reservations several years ago about making KSFR dependent on City funding. She suggested that perhaps the City Manager could administratively award small contracts to KRSN, for instance. She said she was a little hesitant about this, although believed the City should support KSFR as a community radio station.

Councilor Pfeffer stated that KRSN and KSWV are also community radio stations and "have both done yeoman's duty at no cost to us in presenting City issues, of allowing the Mayor and Councilors air time to present issues to the community that otherwise would not get heard." He concurred with Councilor Bushee and Councilor Lopez that the City should look into entering into advertising contracts with radio stations to reach the community.

City Manager Jim Romero agreed to look at the City's advertising budget and the idea of using broadcasting as a way of reaching the community on issues such as water and affordable housing, for instance.

Councilor Pfeffer added that, given that the City is awarding "a fairly large chunk" to KSFR in terms of its overall budget, he thought it fair to ask them to be attentive to making sure they reflect the various points of view of the community in its programming and so on.

Responding to questioning from Councilor Bushee, Mr. Carlisle said KSFR's budget is \$200,000, so the City's contribution of \$62,000 would comprise about 25% of their budget. He added that the \$62,000 is not solely for the full time employee; rather, it is for their overall operating budget. He stated that he did not know if they would actually hire someone or not.

Mayor Delgado said various departments throughout the City have line items for announcements on radio stations, and some owners of these radio stations have suggested that they be able to bid a certain number of hours annually as one package. He commented that this would seem to be a cleaner way of doing it, since the stations wouldn't have to individually bill the departments each time.

The motion passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Wurzburger; Councilor Chavez.

Against: Councilor Bushee.

[Conclusion of Consent Calendar Discussion.]

MATTERS FROM THE CITY MANAGER

Staff Report on Joint City/County Trip to Washington, D.C. to Meet With Santa Fe's Congressional Delegation and Key Federal Officials Regarding Funding Assistance for Regional Water Projects.

Water Division staff member Rick Carpenter introduced Camp, Dresser & McKee representative John Rehring, who coordinated this trip to Washington, D.C.

Mr. Rehring detailed City/County requests for 2004, pointing out that the "message out to the Congressional delegation is very clearly one of City and County collaboration on water projects and in funding for those projects."

- General request for up to \$8.8 million in support of design of the Buckman direct diversion project (diversion, pipelines, pump stations and water treatment plant).
- Request to Bureau of Reclamation for \$750,000 in support of master planning work at the City and County level for water supply projects.
- Under the EPA state and travel assistance grants program, a \$2 million request is being made to fund upgrades to the Canyon Road water treatment plant to get its capacity back up, and a series of infrastructure and water supply upgrades for various County facilities.

Mr. Rehring said new legislation is being requested that would allow the Bureau of Reclamation to participate financially in Santa Fe water projects. He said the legislation is in draft form, but they received good feedback from the BOR and the Congressional delegation on that.

Mr. Rehring noted that the San Juan-Chama contract is set to expire in 2016, and they are asking the BOR to either extend it for 40 years or more, or to convert it to permanent status. He said they are also asking the BOR to convert it from a water service contract to a repayment contract.

[Mr. Rehring's presentation submitted with these minutes as Exhibit "A."]

Councilor Lopez suggested that the "Water Supply Projects Update/May 2003" distributed by Mr. Rehring be considered as an insert in the newspaper as a way of getting the word out to the community.

Mr. Rehring responded that CDM is seeking quotes for the cost of reproducing these updates.

Councilor Lopez suggested that the update also be provided on the City's Web site.

[Water Supply Projects Update/May 2003 submitted with these minutes as Exhibit "A.1."]

Referring to the slides presented by Mr. Rehring, Councilor Pfeffer observed that the federal percentage of the general appropriations request being made for the Buckman direct diversion design was yet to be determined. He asked what the City's share would be between now and 2007 for this \$100 million project.

Mr. Rehring responded that they have been discussing 65%-75% federal, the rest being local and state. He added that state money could count as a local cost share in most cases. He stated that \$2 million for the design has already been received for 2004.

Councilor Pfeffer asked if it was realistic to assume, then, that the City should be looking for \$30-\$35 million between now and 2007 for the Buckman diversion, and Mr. Rehring responded that this was approximately correct.

Councilor Pfeffer commented, "Now we know what we're going to need to be doing. Nobody can say we weren't told."

Councilor Coss and Councilor Wurzbarger both commented that they thought that amount "probably minimal."

Councilor Wurzbarger stated that she has already raised this concern during the budget hearings, and would continue to raise it, "because I think the idea that we don't have this in some form as a line item of what we're starting to do, there's no way we're going to put together \$35 million plus in year 2007, and we should be doing it now, starting in this year's budget."

Mayor Delgado said he was glad to hear that, because some Councilors “have to get very serious that a lot of our monies that we’re spending in other areas have to be concentrated on water. You can see the cost of these projects; they’re very large.”

Councilor Wurzbarger asked to see Mr. Rehring’s contract, and said she would like to have a special session scheduled either through Finance or PUC to explore the timeline of what is being done in Washington and what tasks are involved.

Councilor Chavez pointed out that the City has reallocated \$10.5 million in CIP funding for water projects, so to say that commitment hasn’t been made, or that money hasn’t been taken from other projects, is not true.

Councilor Coss asked that the San Ildefonso diversion project “not drop off the radar screen,” since this remains a very viable option.

Adding to Councilor Chavez’ remarks, Councilor Heldmeyer pointed out that the City still hasn’t debated whether it is going to cut other services in order to provide money for water, and whether it will try to find water in other ways such as through the ratepayers. She said the City also hasn’t had the debate about whether current customers of the Water Division are going to be responsible for an equal share or a smaller share of expansion costs compared to new growth. She stressed the need to have these two debates very soon.

PRESENTATIONS (Cont’d)

Mayor Delgado read a proclamation declaring April 20 to be “The Lensic Santa Fe Performing Arts Center Day.”

Lensic representative Bob Martin thanked the Mayor and Council for their support, now going into its third year.

MATTERS FROM THE CITY ATTORNEY

Executive Session Pursuant to §10-15-1 (H) (7) for the Limited Purpose of Discussing Matters Subject to Attorney-client Privilege Pertaining to Pending Litigation; City of Santa Fe v. Las Campanas Santa Fe Limited Partnership and Discussion of Amendments to the Stage III Ordinance and Proposed Variances.

City Attorney Bruce Thompson asked the City Council to go into Executive Session for the limited purposes stated on the agenda.

Councilor Lopez so moved. Councilor Coss seconded the motion, which passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: None.

[The Governing Body went into Executive Session at approximately 5:15 p.m., recessed for dinner, and reconvened for the Evening Session at approximately 7:30 p.m.]

EVENING SESSION

The Evening Session of the City Council Meeting was called to order at approximately 7:30 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Mayor Larry A. Delgado
Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

None.

MOTION TO COME OUT OF EXECUTIVE SESSION

Councilor Lopez moved to come out of Executive Session, noting that nothing was discussed during Executive Session other than what was contained within the agenda.

Councilor Bushee seconded the motion, which passed 5-0 by voice vote, Councilor Bushee, Councilor Coss, Councilor Heldmeyer, Councilor Lopez and Councilor Ortiz voting for, and none against. [Councilor Chavez, Councilor Pfeffer and Councilor Wurzbarger were not present during this action.]

PETITIONS FROM THE FLOOR

Marilyn Tellez

Ms. Tellez, 2955 Plaza Azul, in Park Plaza, stated that there has just been a 20% increase in their dues because of the high cost of water. She questioned what motivation she had for conserving water "when *The Reporter* has reported that there is a big leak east of St. Vincent Hospital coming from a tank, and emitting probably 30,000 gallons of water a day."

Mayor Delgado asked Ms. Tellez to contact the City Manager's Office and discuss this further. He provided Ms. Tellez with Mr. Romero's telephone number.

Andrew J. O'Connor

Mr. O'Connor, 612 East Gomez, stated that he was deprived of his liberty on February 13 while at St. John's College "doing a job search." He said he was arrested by four Santa Fe police officers, Mirandize, handcuffed and illegally searched without being charged and with no probable cause.

Mr. O'Connor said he has written to the City Attorney, at his suggestion, to see if this matter could be settled without resorting to litigation. He appealed to the Council to resolve this matter and compensate him for this injustice.

APPOINTMENTS

Mayor's Youth Advisory Board

Mayor Delgado requested approval of the reappointments of Jeramie Bisagna, Felicia Channing and Vince Tapia, and the appointment of Kieran Gallagher-Gonzales, all terms ending 2/2004.

Councilor Lopez moved for approval. Councilor Heldmeyer seconded the motion, which passed 8-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzburger voting for, and none against.

Airport Advisory Board

Mayor Delgado requested approval of the reappointments of Carolyn Cook and Phillip Sweeney, terms ending 2/2004.

Councilor Lopez moved for approval. Councilor Bushee seconded the motion, which passed 8-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzburger voting for, and none against.

Historic Design Review Board

Mayor Delgado requested approval of the reappointments of Christopher Purvis, Chair (architect), and Cecilia Rios (at-large); and the appointments of John M. (Jake) Barrow (historian) and Mirtha Davalos (construction industry), all terms ending 1/2005.

Councilor Lopez moved for approval. Councilor Heldmeyer seconded the motion, which passed 8-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzbürger voting for, and none against.

PUBLIC HEARINGS

Request From Christian Geideman for a Wine Wholesaler License to be Located at New Mexico Sake Distributing, 200 Montezuma, Suite B.

City Clerk Yolanda Vigil called the Council's attention to staff's recommendation that it be noted that this business is required to comply with the City's litter and noise ordinances as a condition of doing business with the City.

There was no public comment.

Councilor Chavez moved for approval. Councilor Heldmeyer seconded the motion.

Councilor Bushee asked what business was at this location previously.

Christian Geideman, who was duly sworn, said it was an empty office space within Sanbusco.

The motion passed on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbürger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: None.

Request From Rociada, LLC, for a Restaurant (Beer & Wine) License to be Located at Rociada, 304-308 Johnson Street.

City Clerk Yolanda Vigil called the Council's attention to staff's recommendation that it be noted that this business is required to comply with the City's litter and noise ordinances as a condition of doing business with the City.

There was no public comment.

Councilor Bushee moved for approval. Councilor Coss seconded the motion, which passed on the following Roll Call vote:

For: Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez.

Against: None.

**CONSIDERATION OF BILL NO. 2003-6: ADOPTION OF ORDINANCE NO. 2003-10. (Councilor Lopez and Councilor Bushee)
An Ordinance Amending Section 10-2 SFCC 1987, Relating to Noise, Regulating the Use of "Boom Boxes" on all Public Streets, Alleys and Parks and in Residential and Commercial Districts and Providing Penalties for Violation of These Provisions. (Postponed at April 9, 2003, City Council Meeting.)**

Councilor Lopez noted that many months of work have gone into this ordinance, and previous issues that kept it from being considered for adoption have since been resolved. She said she thought the ordinance was fair. She stated that the Police Department has requested that the Council adopt an ordinance like this that specifically identifies this particular noise nuisance.

Councilor Lopez moved for approval. Councilor Bushee seconded the motion.

There was no one present wishing to speak against this ordinance.

Dr. Christopher Fletcher, a physician and resident of Arroyo Hondo in Santa Fe County, with an office on Galisteo Street, came forward in favor of this ordinance.

Dr. Fletcher submitted an editorial from *The Albuquerque Journal* published earlier this week and authored by Stephen Frazier, president of Citizens for a Quiet Environment. *[Submitted with these minutes as Exhibit "B."]*

Dr. Fletcher stated that a person experiences pain in their ear at 85 decibels, and sound engineers last summer at his office measured the automobiles at Los Alamos National Bank, and the ambient background noise of the cars alone was 72 decibels, over the 50 decibels permitted in City ordinance. He said a boom box car there was measured at 110 decibels. He noted that OSHA law states that 110 decibels for 15 minutes is dangerous to one's health and illegal according to OSHA policy.

Dr. Fletcher also stated that low frequency sound travels for miles, unlike high frequency short distance sound. He said his building "is halfway wrecked" as a result of noise, with cracked stucco, vibrating windows, shaking doors, and nails and screws are popping out of the walls.

Dr. Fletcher said he has talked to kids with boom boxes, and one driver said he "had friends at the Police Department" and so "none of his tickets ever stuck." [Police Chief Beverly Lennen responded later in the discussion.]

Dr. Fletcher questioned how the 25-foot rule in the ordinance would be effective. He said his office is 12 feet from Los Alamos National Bank and when a boom box is there, he can't talk on the phone. He said his patients complain of dizziness, nausea and headaches, and his staff says the noise "is unbelievable." He said Councilors have been in his office and have heard this noise, and something has to be done about it.

Councilor Bushee said she sponsored an ordinance a few years ago, which was set aside because of concerns over regulation of juveniles. She asked City Attorney Bruce Thompson what has changed since then.

Mr. Thompson said the question he was asked was whether this could be passed because it would be applied to juveniles. He stated that the question came up in light of the curfew ordinance, where it said there could not be an ordinance applying to juveniles that didn't apply to other individuals. He said that issue does not exist in the so-called boom box ordinance because it would apply equally to adults and children.

Mr. Thompson continued, "However, I have heard that there are questions about whether or not this would be enforced against juveniles because of the state law which sets forth the limits of what juveniles shall be prosecuted. But at least this will have some impact in cutting down the level of boom box noise."

Councilor Bushee asked Mr. Thompson if he has a ruling as to whether this applies across the board regardless of age, and Mr. Thompson responded that he has not looked at whether it would be enforceable against a juvenile, but at least it would be enforceable against adults, and it was quite possible it could be enforced against juveniles. He said that was a question for the juvenile courts to decide.

Councilor Bushee asked Police Chief Beverly Lennen who would enforce this.

Chief Lennen responded that the wording in the ordinance means that the Police will no longer need a decimeter in order to enforce it. She said that, if the noise is stationary, it can be measured by Code Enforcement using a decimeter. She stated that boom boxes are not stationary as a rule, however, but the Police are able to take a measurement of distance rather than of decibels, which simplifies it.

Councilor Bushee said a neighborhood in her district is concerned about individuals who essentially drive around all day using amplified mufflers on their cars "that make kind of a shooting sound." She said they wanted that included in this ordinance.

Chief Lennen explained that those mufflers have been an issue but suggested that they be kept separate from the boom box issue because they may be applicable in other sections of the noise ordinance.

Councilor Heldmeyer said the Mayor's Youth Advisory Committee has expressed concern that this ordinance will be used as a pretext for stopping young people and infringing on their rights when they are stopped.

Chief Lennen responded, "We have been put on notice by Juvenile Probation and the Children's Court that they enforce statutes only. They do not enforce local ordinances. To my knowledge, they are the sole authority in regard to enforcement against juveniles. That is the position we are in right now. Where the Police Department is coming from is that we need to focus on the boom box itself. Whether or not we will even be able to enforce against juveniles legally, I can't answer that question. So, therefore, it would be very difficult for the Police Department to use this ordinance as any excuse or attempt to deal specifically with a juvenile."

Councilor Heldmeyer said it has been suggested that, at some point after this ordinance takes effect, a police officer or two be made available one night near the cruise line downtown so that people could get some idea of whether their particular boom box was in accordance with the ordinance or not.

Chief Lennen responded that the Police Department can also make that determination for people with boom boxes at other times and locations — if they would be willing to contact an officer, “we’ll get the word out.”

Councilor Pfeffer asked Chief Lennen to respond to Dr. Fletcher’s remarks earlier that a boom box owner indicated to him that he had connections to the Police Department and so didn’t have to worry about tickets.

Chief Lennen responded that there are only two ways a citation can be dismissed: 1) The citing officer must request dismissal with a written explanation, which then goes through the chain of command to her office, where dismissal will not be authorized by the judge without her signature or the signature of the deputy chief. 2) The request for dismissal has to go before the prosecutor and the court.

Chief Lennen said the Police Department cannot do that for any individual, and it is a misdemeanor for anyone to solicit it.

Councilor Pfeffer stated that he would hope the Police Department would enforce this ordinance against juveniles “and let that be the test case.” He commented that most of the people making the noise are juveniles.

Chief Lennen responded that there is no court for the Police to refer a juvenile to, and the Police cannot refer them on a City ordinance to the Municipal Court. She said the only court having jurisdiction over persons under 18 years old is the Children’s Court, which has a working relationship with Juvenile Probation, and that is the group of individuals that acts like the District Attorney’s Office does for adults. She said the charges would be brought from their office and forwarded to the Children’s Court.

Councilor Ortiz asked Chief Lennen if she anticipated additional stops for the Police because this ordinance would be in place.

Chief Lennen responded that there are already ordinances in place regarding disturbing the peace, but they do not clearly speak to the issues in this ordinance. She said the Police Department therefore would be in a better position legally to essentially do what it is already doing.

Councilor Ortiz said he understood, then, that the language in this ordinance really clarifies what the City would be citing people for anyway, which is disturbing the peace, and Chief Lennen responded that this was correct.

Addressing Dr. Fletcher’s comments, Councilor Ortiz said he saw nothing in this ordinance or the existing noise ordinance that there can be some kind of contingent liability or third party liability for violations of this ordinance. He said

Dr. Fletcher had mentioned Los Alamos National Bank a number of times, but the ordinance speaks to the owner of the boom box, not any landlord, etc.

Chief Lennen responded that this was correct.

The motion passed on the following Roll Call vote:

For: Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz.

Case #M 2002-47. Kachina Ridge/Avenida de las Americas Realignment. Jim Siebert, Agent for SBC LLC, Requests Approval of a Land Exchange for Realignment of Right of Way Formerly Known as Avenida de las Americas. Property is Located East of Avenida de las Americas, West of Siringo Road, and South of Cerrillos Road. (Postponed at April 9, 2003, City Council Meeting.)

CONSIDERATION OF BILL NO. 2003-9: ADOPTION OF ORDINANCE NO. 2003-11.

Case #ZA 2002-17. Kachina Ridge — 14-Lot Rezoning. Jim Siebert, Agent for SBC LLC, Requests Rezoning of Approximately 2.909 Acres, Located East of Avenida de las Americas, West of Siringo Road, South of Cerrillos Road From the Current Zoning of R-5 (Single Family Residential, Five Dwelling Units Per Acre) to RM-1 PUD (Multi-Family Residential — Planned Unit Development, 21 Dwelling Units Per Acre). The Request Includes the Submittal of a Preliminary Development Plan for 14 Lots. (Postponed at April 9, 2003 City Council Meeting.)

City Planner Greg Smith reported as follows: “The rezoning case and the realignment case are related to development of a project known as the Kachina Ridge Project. In its first form, this case appeared before the Council as a rezoning case in the early 1990s. It was modified in 1995 into substantially its current form. The Council may recall that, on October 30 last year, you reviewed a development plan for the older sections of this Kachina Ridge Project, and you approved the development plan for the larger portion of this. At that time, the applicant presented to the Council information that they had worked with neighborhood residents and were intending to incorporate an additional 2.5 acre parcel into the larger project in order to accommodate realignment of Avenida de las Americas to move it farther away from the existing condominium development with frontage on Avenida de las Americas.

“This rezoning case and road realignment case are before you tonight to implement the solution that was presented to you by the applicant on October 30, 2002. The Planning staff and the Planning Commission recommend approval of both these cases. The conditions of approval are included in your staff report; and although the number of conditions is lengthy, they are for the most part routine conditions. The Planning Commission will oversee implementation of the final phases of this project through their approval of final subdivision plats and final development plans, and in fact there is a Planning Commission hearing scheduled May 8 for the final plan associated with this rezoning that is before the Council at tonight’s hearing.”

Case #M 2002-47 Conditions:

1. The applicant shall prepare a plat of the realignment to the approval of the City Traffic Engineer and the Planning and Land Use Director.
2. The realignment plat shall not be recorded prior to the effective date of the ordinance approving rezoning application No. ZA 2002-07, or another ordinance that makes specific provisions for the use and development of the former right of way as part of one or more Planned Unit Developments.
3. The realigned right of way shall provide for a subcollector street in accordance with City standards, and shall also provide for appropriate traffic-calming measures.
4. Applicant shall install curbing, signage, barriers, etc., at the southerly end of Avenida de las Americas in accordance with City standards and to the approval of the City Traffic Engineer.
5. Applicant shall install Stormwater conveyance and/or storage improvements to accommodate runoff from the improved portion of Avenida de las Americas to the approval of the Public Works Director and Subdivision Engineer.

Case #ZA 2002-17 Conditions:

[Conditions No. 1-16 are recommended by the Planning Commission and staff, and are included in the rezoning bill. Condition No. 17 is recommended by staff to correct an omission from the report to the Commission. Conditions from Case No. M-2001-23 are indicated with asterisks.]

1. The applicant shall obtain approval of the vacation of a portion of the right of way for Avenida de las Americas as shown on the preliminary development plan prior to filing the final development plan.*
2. Applicant shall submit detailed drainage studies at the time of application for approval of the final development plan, to the approval of the City Subdivision Engineer. *

3. Applicant shall submit a detailed landscape plan at the time of application for approval of the final development plan. The landscape plan shall include detailed provisions for preservation or relocation on the site of the maximum feasible number of mature piñon trees. The plan shall also include provisions for street trees throughout the project.*
4. Applicant shall provide evidence of authorization from affected property owners for off-site improvements shown on the development plan, prior to filing of the final development plan.*
5. Final development plan shall provide each unit with a private fenced yard of at least 200 square feet in area and not less than 10 feet in any dimension. The private yards shall be located outside of any required street setback area.*
6. Developer shall pay for modification of the median at the Cerrillos/Las Americas Intersection, as a traffic mitigation measure to the approval of the City Traffic Engineer.
7. Developer shall contribute one-half the cost of installing a signal at the intersection of Cerrillos Road and Avenida de las Americas, as a traffic mitigation measure. The signal will be installed by the City as part of the Cerrillos Road project. The developer's contribution for the signal shall not exceed \$70,000.*
8. The final development shall include traffic calming measures consistent with the City traffic calming program and City Codes. Those measures may include a traffic circle at the intersection of Avenida de las Americas and Caminos de los Arroyos.*
9. The final development plan shall reflect street cross sections consistent with applicable code requirements, including sidewalks on Avenida de las Americas within the project site and along its boundaries. *
10. The final development plan shall incorporate corrections per Traffic Division staff "redline" comments.*
11. Applicant shall enumerate and show on the final development plan all proposed variances for reduction of required side setbacks from five feet to zero feet on various lots, as generally indicated on the preliminary development plan.*
12. Intersection locations for private roads and proposed public loop road south of the arroyo, traffic calming measures, and geometry for all proposed roads, may be modified with the final development plan to the approval of the City Traffic Engineering Division, the Fire Marshal and the Planning Commission.*

13. A traffic circle shall be provided at the intersection of Avenida de las Americas and Kachina Ridge Drive.
14. Drainage Plan shall be modified as necessary to comply with provisions of new Terrain Management and Stormwater Regulations.*
15. A note shall be placed on the development plan stating that the development is subject to the Water Allocation and/or Water Offset Retrofit provisions of Ordinance No. 2002-29 and Resolution No. 2002-55 at the time of permit application or water hookup request. Compliance may be achieved by use of retrofit credits for Type A low priced residential units, if applicable.
16. Common open space meeting the requirements of Section 14-8.4 SFCC 2001 shall be provided in conjunction with the other phases of the Kachina Ridge Planned Residential Development.
17. *Each of the small parcels created from the westerly portion of the former right of way of Avenida de las Americas shall be deeded to the owner of the adjoining lot in Las Americas Planned Unit Development Subdivision, as previously agreed by the applicant and the adjoining owners. Unless and until such time as the deeded parcel(s) are annexed to the Las Americas PUD, use of the deeded parcels shall be limited to accessory uses and structures permitted by Section 14-6.3(A)(2) SFCC 2001, but excluding accessory dwelling units, garages and carports.*

The floor was opened to public comment.

Henrietta Tapia, against

Ms. Tapia, 3341 Siringo Road, was sworn. She said the secretary of the Southwest Bellamah Neighborhood Association, Sylvia Ketterman, has mailed letters to the Mayor and Council.

Ms. Tapia submitted a list of "Expressed Agreements Between Southwest Bellamah Neighborhood Association and Kachina Ridge Developers" dated September 30, 2002:

1. No zoning change greater than R-6. Housing value on additional 2-1/2 acres should be equivalent to other Kachina Ridge houses.
2. Help in obtaining the 1-1/2 acre adjacent lot for a neighborhood walking park or open space.
3. Sturdy (6 ft.) block wall with material cover that would discourage graffiti.
4. We would prefer white streetlights.

5. No construction vehicle to use Bellamah streets during the construction phase.

Ms. Tapia stated that Nos. 1, 2 and 3 were addressed before the Council on October 17; and 4 and 5 were discussed later with the developers.

Ms. Tapia said Ms. Ketterman faxed her a letter, which she read to the Governing Body as follows: "We have a few items to bring up before you issue this final permit. Number one issue is the six-foot block wall that was promised during our ENN meeting. It was supposed to be along the back part of the housing. Now the developer says it will be pilasters and wood. They are saying that a covenant with homeowners will enforce upkeep, but it isn't enforced in other developments. You build and leave, but we remain to see the wood rot.

"Second issue is the open space. The developers have decided to use the tactic of divide and conquer by donating land to five individuals instead of providing open space for the community, as it should be. The people that benefit, two out of the five people, are the president of the Association, which is Avenida de las Americas; and the attorney for the Association. So by getting their support, they were able to divide the community by not providing to all; just to a few.

"For Carol Lopez and Matthew Ortiz: It's one thing to say you represent the whole community, but when something this important comes up, we can't get you to respond. We wrote letters to you in November and against sent copies of it in April regarding the last one and a half acre of undeveloped land in our area, and not one peep out of you. Why couldn't the developer provide this as open space, benefiting the community, instead of donating to five individuals? And if that doesn't happen, why can't you let us know if the City can purchase and provide it as open space?"

Dennis Tapia, against

Mr. Tapia, a resident of Siringo Road, was duly sworn. He said he was married to Henrietta Tapia. Mr. Tapia stated that, at one time, on the north end of the development there was a proposal for a wall that was probably intended to be masonry or the like. He said the wall in the plan is a wood and block pilaster. He stated that this is the only real concern left with respect to this development, because the wall will probably not be maintained regardless of whether there is a covenant or not.

Jim Siebert, in favor

Mr. Siebert, agent, 915 Mercer Street, was duly sworn.

Mr. Siebert reviewed the plans on both cases.

Addressing the block wall, Mr. Siebert said concrete pilasters are planned, 15 feet on center, and a cedar wood fence between the pilasters. He stated that a homeowners association would be created along with a requirement that the homeowners association maintain the exterior fence around the perimeter of the property.

Lynn G-Scott, in favor

Ms. G-Scott, owner and broker of Realty 3000, was duly sworn. She said she had the pleasure of representing Arch Sproul and the developers in a small multi unit complex that Mr. Sproul did, "and we sold in that development houses that were approximately \$110,000. They had tile, wood ceilings, beams, *nichos*, tile countertops. What I would like everyone to consider here is that this Type A subdivision consists of homes that you would live in or I would live in. I mean, they are serious quality because Arch really believes in the people and he's doing this to give back to the people, and he wants to be able to have homes for policemen and teachers — something that's really of quality. And it's going to be beyond any quality that's ever been seen in a Type A subdivision."

This concluded public comment.

Addressing Henrietta Tapia, Councilor Lopez said she was sorry to hear that Ms. Tapia felt that she and Councilor Ortiz had essentially abandoned the neighborhood. She said both she and Councilor Ortiz were instrumental in requiring the developer to have another meeting with Ms. Tapia last week to try to resolve these issues.

Mr. Siebert confirmed for Councilor Lopez that he met with the neighbors last Wednesday at the Genoveva Chavez Community Center to discuss two issues. He said Greg Smith from City staff was also present, and addressed the issue of the RM zoning. He stated that the fence was the other issue. He explained, though, that a 300-foot cement block wall would cost about \$15,000, which would be a significant cost to add to a Type A development.

Councilor Lopez asked Mr. Siebert how much the pilaster and wood fence would cost, and Mr. Siebert responded that it would cost slightly less than half of the cost of a cement block wall.

Mr. Siebert, speaking to Condition #7 requiring a \$70,000 contribution, requested that the \$70,000 be provided on a pro rata basis as each phase of the development comes in; in this case, they are asking for 28 units and would ask that that pro rata share be contributed toward the \$70,000.

Councilor Lopez stated that she and Councilor Ortiz have sponsored two resolutions in conjunction with this development. She said the first resolution, which passed, asks the City Manager to pursue the possibility of taking over the Game & Fish land at the bottom of Richards Avenue and use it as open space. She said the second resolution deals with the lack of connection on Camino de los Arroyos and asks that there be a transportation district formed such that, if the road were connected over as it should be, as the developers of that property come on line they will have to pay their fair share to allow the connection. She said the idea is that all of the traffic from Kachina Ridge does not have to go back through Las Americas but can use an alternative route to connect into Vegas Verdes.

Councilor Ortiz asked Traffic director John Nitzel to comment on Mr. Siebert's request for a pro rata contribution on the intersection.

Mr. Nitzel responded that this was new to him, "but we could certainly take a look at it." He said the \$70,000 is the developer's overall contribution for the traffic signal, and the Cerrillos Road project is winding up, and the money was going to be put in that fund for the project.

Councilor Ortiz asked Mr. Siebert if anything has changed on either of these proposals that was not previously discussed or part of the preliminary development plan approved last October.

Mr. Siebert responded that they had presented an informal plan for the 2.5 acres, and the plan remains the same. He said he was still committed to having the same number of units, 14, on this particular property.

Councilor Ortiz moved approval of Case #M-2002-47, with the listed conditions. Councilor Wurzbarger seconded the motion.

Councilor Bushee observed that the wall discussed earlier is not included in any of the conditions of approval.

Mr. Siebert responded that the wall was part of the informal discussions between the developer and neighbors, and was never a condition of staff, Planning Commission or City Council.

Councilor Bushee asked what the conclusion of the discussion was with the neighborhood with respect to the fence or wall.

Mr. Siebert responded, "The initial discussions we had, to be real frank with you, was that we would have constructed a wall for an additional 300 feet with the understanding that the James Street neighborhood was going to support the

project. And what happened is, the night of the City Council meeting, that did not occur. We will certainly abide by the commitment where the wall is; immediately adjacent to James Street, there will be a stucco wall. We did convert the wall that would go away from James Street that is perpendicular to it from a concrete or cement block wall to a pilaster and wood fence.”

Councilor Bushee asked why 300 feet is being constructed, and Mr. Siebert responded, “The developer feels like that was a commitment they made; and even though the neighborhood didn’t stand up on their side, he was still willing to stand up on his side on that point.”

Councilor Bushee asked Mr. Siebert to discuss Ms. Tapia’s concern that some individuals are getting open space and others are not.

Mr. Siebert responded that this could be “mixing apples and oranges.” He said the concern about open space is a citywide issue and this area has a deficit of open space. He said the issue addressed by Ms. Tapia involves the vacation of land. He said half goes to SBC and the other half goes in individual interests to those people on Avenida de las Americas who back up on that road.

In the course of discussion, Mr. Siebert clarified that the existing zoning is R-1, not R-5 as indicated in staff reports.

Councilor Heldmeyer said she received a letter from residents of the neighborhood who were not concerned with the construction of the wall but, rather, where the wall was being constructed. She said she thought they expected that the wall would go all the way to the end on the east-west boundary.

Mr. Siebert responded that he has not heard this concern expressed recently.

Councilor Heldmeyer commented that presumably different people are bringing up these concerns, and Mr. Siebert agreed that this was possible, but added that in the last two or three months that has not been the issue.

Councilor Heldmeyer said she received the letter a couple of weeks ago, and the concern was the second half of the property. She asked what abuts that, and Mr. Siebert responded that it is vacant land belonging to the State Game & Fish.

Councilor Lopez said she was pleased to report that, in response to the resolution previously adopted by the Council instructing the City Manager to look into taking over the Game & Fish property so it could be used as open space for this development, Mayor Delgado will also become involved in looking into a possible land swap; specifically, exchanging it for the Game & Fish property that sits next to the MRC. Councilor Lopez added that she has also talked with Rep.

Jim Trujillo, who has offered his full support in working with the State to acquire the property to use as open space.

Councilor Bushee pointed out that the MRC land that the City wants to swap is leased from the BLM, so she was not sure how that would happen.

Mayor Delgado responded that he knew that, “but the only way we’re going to find out is to check it out.”

The motion for approval of Case M-2002-47, with all conditions, passed on the following Roll Call vote:

For: Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer.

Against: None.

Councilor Ortiz moved approval of Case #ZA 2002-17, Ordinance No. 2003-11, with all conditions, and with the clarification that the developer be allowed to phase in the contributions for the signal on Cerrillos Road and Avenida de las Americas; and that all references in the bill to R-5 be changed to R-1.

Councilor Chavez seconded the motion.

Mayor Delgado asked Mr. Siebert to comment further on the phasing in of the traffic signal.

Mr. Siebert said he first wanted to clarify that 82 units have been approved, which was reduced from 84 as part of the amended plan, so it would be 28/84 of the \$70,000. In addition, he said, the developer will include the entire \$70,000 cost in the letter of credit, so the City is covered for the entire amount should the project not materialize for one reason or another.

The motion passed on the following Roll Call vote:

For: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger.

Against: None.

Case #A 2003-03 – APPEAL. Milton D. Combs, Agent for Pueblos del Rosario Board of Directors, Appeals the Decision of the Planning Commission to Approve the Rosario Hill Condominium Development Plan, Case #M 2001-16, Rosario Hill Condominium Development Plan for Development Plan Approval on an Area of 4.837± Acres for a 32-Unit Condominium Project. The Property is Located North of Rio Grande Avenue and South of Los Lovatos Road.

Councilor Pfeffer disclosed that one of the significant active parties in his campaign for office was also very active in the condominium group below in this process. He said he would recuse himself if there were any objection to his participation in the discussion and vote.

Councilor Lopez asked Councilor Pfeffer if he thought the contributions these people made to his campaign would affect his ability to make a fair and impartial decision, and Councilor Pfeffer replied that he honestly did not believe so.

There was no objection to Councilor Pfeffer's participation from members of the Governing Body.

Councilor Coss disclosed that he met with the Rosario Hill neighbors about two months ago.

[A few minutes into the proceedings, Councilor Heldmeyer disclosed that she met several months ago with the appellants prior to their filing the appeal. She said, "They just wanted me to see the lay of the land. And apparently I was on the Summary Committee when there was a lot split on this property, but I don't remember being there."]

City Planner Greg Smith reported as follows: "The development plan was approved by the Planning Commission on February 6. The appeal was filed by the condominium association through which the proposed new project would take its access. The Planning Commission approval was conditional, and the conditions are included in the Council packets. The appeal filed by the association to the south asks the Council to overturn the Commission's decision and for the Council to direct the project developer to revise the plans to take access northward from Los Lovatos Road rather than access southerly through the existing condominium development.

"Several factors are stated in the basis for the appeal.

"The appellants state that access to the new project would be unsafe. They believe that access via Los Lovatos Road to the north would be safer. The City's Traffic Engineer has done extensive review of safety issues. There are safety

concerns on both routes, but the City's Traffic Engineer has concluded that the common driveway to the south is preferable if a pedestrian walkway is provided to address possible concerns with pedestrian safety to the southward access.

"The second item in the appeal is that the appellants dispute testimony from people who own lots to the north. Those property owners to the north claim that Los Lovatos Road was not properly dedicated to the City and does not in fact provide an opportunity for access for the developer. The staff has reviewed extensive submittals from those property owners, reviewed historic plats filed with the City and the County, and the evidence is not conclusive, in staff's judgment. Pending resolution by a quiet title suit, the City Attorney believes that it is appropriate for the City to rely on the Los Lovatos resubdivision plat, which does show Los Lovatos as dedicated right of way. It is an option for access to the proposed project; it is not the access recommended by your staff or by the Planning Commission.

"Third issue raised in the appeal is the appellants state that they did not get an opportunity to provide complete testimony at the February 6 Commission hearing and did not get an opportunity to rebut testimony given by the applicants in response to Commission questions. The Commission's February 6 hearing was the second meeting where they considered this application, and there was extensive testimony by the appellants at the previous hearing. In any case, there are not specific rules in City Codes with regard to how many rounds of testimony and rebuttal are required to be allowed. The fact that the Council is proceeding with the appeal hearing, in staff's judgment, would be a *de facto* correction of any problems that there might have been with the limit on testimony by the Planning Commission on February 6. If they didn't get a chance to say it on February 6, they certainly have a chance to present their testimony tonight.

"The fourth issue is the appellants state that they oppose the construction of the sidewalk within the common driveway, since it would require removal of ten parking spaces. Staff would note that City Code does not require those parking spaces. The condition as adopted by the Planning Commission states, and I will quote from the Commission: 'Applicants shall provide a sidewalk along one side of the private access drive if agreed to by the Pueblo del Rosario Condominium Association and comply with other requirements of the Traffic Division memo dated January 27, 2003.' So presumably if they are unable to come to agreement with the condominium association, the Commission's language would allow them to construct a driveway without the sidewalk; rather, to utilize the existing driveway without building a sidewalk.

"A fifth item, raised by the appellant, is they note that they do not believe the sidewalk would comply with ADA standards. Staff's analysis: we do not have a final grading plan level of detail for construction of the proposed sidewalk. It's likely, in staff's preliminary analysis, since the existing topography between the

existing condominium project and the new project site is steeper than ten percent, in staff's judgment it's likely that the project would qualify for an exemption from ADA accessibility requirements because of the topographic constraints.

"The applicant's attorney has submitted a motion to dismiss or limit the appeal. Staff has noted that the Council's practice on previous cases is to treat this as more or less of a *de novo* hearing and there are not City regulations or other laws that we're aware of that require the Council to limit testimony or participation in testimony at tonight's hearing based on the motion to dismiss as filed by the developer."

This concluded Mr. Smith's presentation.

The floor was opened to public comment from persons in support of the appeal.

Karen Drysdale, duly sworn

Ms. Drysdale, 705 Rio Grande Avenue, said she is a teacher assistant for kindergartners at Carlos Gilbert Elementary School, where she has worked for 11 years. She said she was concerned about the safety of children walking to and from school because of increased traffic from this development and from the future Atlas program at the old St. Catherine's Indian School. She stated that the traffic coming down Piñon and Juniper should be dispersed as much as possible. She stated that there is no sidewalk going up Juniper, and the kids have to walk along the dirt shoulder there.

Milton Combs, agent for appellants, duly sworn

Mr. Combs, 501 Rio Grande, and president of the Pueblo del Rosario Homeowners Association, stated, "We've always been very open concerning our position regarding this development. We have no problem with the development. Our problem is with the requested access down our driveway. We feel access through our property is inappropriate and unsafe, and a better option exists on the north side of the property."

Mr. Combs said he wanted to clear up some inaccuracies in the response provided by the Near North Group Neighborhood Association and in other materials contained in the Council packets.

[Response to Appeal by the Near North Group Neighborhood Association, signed by its president, James H. Russell, Jr., submitted with these minutes as Exhibit "C."]

Mr. Combs stated that James Russell, president of the Near North Association, said that he observed vehicles parked on both sides of the driveway, which was “not possible. We do not allow this. This has never been the situation. We allow parking only on one side of the driveway.

“He also claimed I rebuffed his attempts to speak with us. Maybe he remembers our conversations differently; we spoke a number of times. We agreed that our position was that we were going to resist traffic using our driveway. He had no suggestions how to get around this particular issue, so we concluded we had nothing to discuss, although we were and do remain open to having discussions with them.

“Mr. Russell also refers to discussions between our board and the owners of Rosa Development. He was not privy to these discussions, but we did have discussions concerning mitigation, traffic calming measures and such.”

“Under the previous proposal it was apparently appropriate for the Near North Group to resist the use of City streets for the development traffic, but now that the traffic’s being sent in our direction, Mr. Russell condemns Pueblo del Rosario residents for taking the same approach as he once did.

“People from the Near North Area also contend Los Lovatos does not connect to the development of property on the north; however, there is a recorded City plat, signed and notarized by the members of that area, showing that Los Lovatos does indeed connect to the property.

“City staff had not expressed strong preferences for one access over the other. They said both of them are acceptable, but both have problems. However, we do not feel some aspects were given sufficient consideration in this evaluation. The biggest concern we have is the troublesome intersection of Paseo de Peralta and Griffin Street. Any of you familiar with it know that it is challenging at best, and the last thing it needs is more traffic. Some has already mentioned the St. Catherine’s traffic; no one knows what can happen there. It’s a large property and it could produce a large amount of traffic. It’s all coming into this intersection. City traffic staff has said that their traffic modeling software does not work adequately and it may not work adequately at this intersection due to the awkward configuration, the S curve, and the two intersecting streets that are there within 100 feet of the Paseo intersection.

“City staff also feels it appropriate to consider our private driveway as a subcollector street due to the amount of traffic it would sustain if this development comes our way. Minimum City standards for a subcollector street are 42 feet right of way. There’s a 28-foot right of way. Even if you narrow it down to two traffic lanes, a setback and a sidewalk with curbs and gutters, it still

cannot fit into the 28 feet allowed. We are being asked to accept a substandard situation as the only option.

“There are other reasons why we’re opposed to our driveway being shared with the new development. We have no control over the residents and guests of these new homes to be built. If they are speeding or driving recklessly and endangering us and our children on our driveway, we have nothing we can do about it, and neither do the City police, until there is an actual accident. Shared control is essential for shared use.

“We also ask you to consider the relative impact of the additional traffic. The traffic increase on our driveway would be a 65 percent increase, give or take; no one can say for sure, but those are the numbers we are being asked to use. Imagine that on your street. The same relative impact on the City streets to the north might not even be noticeable given their average volume of traffic.”

Ken Cassutt, duly sworn

Mr. Cassutt, attorney for Pueblo del Rosario Condominium Association, said he wanted to make a narrow point with respect to whether this driveway or road meets City Code and the standards required in order to serve this development.

Mr. Cassutt noted that City Traffic Engineer John Nitzel’s report used as an example the requirements for a subcollector road, but those requirements only apply if the road is public, which was not the case here. He noted that City Code requires, for a private road, a 38-foot right of way, 22 feet of pavement, and 16 feet of shoulder and drainage, or eight feet on each side. Mr. Cassutt said he would ask, then, if a variance would be appropriate for this roadway because it is only 28 feet wide.

Mr. Cassutt said the other issue involved the Planning Commission requirement for a sidewalk on one side. He added that a condition put on that was that, if the Pueblos del Rosario Association approved it, it would happen. He said, “Of course, the implication is that if the Association doesn’t approve it, then the sidewalk is not required. That doesn’t make sense to us.... Then the question becomes: can that sidewalk fit within the 28-foot right of way?”

Catherine Burns, duly sworn

Ms. Burns, 501 Rio Grande Avenue, #D-2, said she was one of the fortunate residents of Santa Fe who was able to purchase one of the affordable housing properties. She stated that her family grew up on Piñon Drive, so she played in this area as a child. She said her son, who is six, attends Carlos Gilbert and right now can safely ride his bike in the driveway, and she and her boy can walk safely to school until they get to the Paseo/Griffin intersection. She stated that the

cross guard, Mr. Gonzales, is able to get them safely across, “but even he has experienced times when he has almost been hit walking families across that street.”

Ms. Burns stated that the neighbors know her son, and look out for him, similar to the conditions under which she grew up on Piñon Drive. She said, “I am concerned, as a parent, that for our children the additional trips up and down our driveway will jeopardize their safety and the access to and from our home.” She said she therefore favored the use of the north access to help disperse some of the traffic.

Arthur Panaro, duly sworn

Mr. Panaro, 501 Rio Grande Avenue, stated that his lives in a section of Pueblo del Rosario where access to the driveway entrance on Rio Grande is not necessary. He said he goes up Piñon Drive instead. He said he was concerned about the congestion at Paseo “with that strange configuration of three streets that go into Paseo, with a lot of traffic feeding out of our driveway, which is basically what it is. It’s going to create quite a mess at that corner.” He said he thought the north access a better choice for that reason.

[Letter from Mr. Panaro submitted with these minutes as Exhibit “C.1.”]

Anne Condon, duly sworn

Ms. Condon, 110 Calle Royale, said she was approached by the condominium association and asked for her advice, which she has given. She said, “What I’d like you to understand is that, for the neighborhood, for the condo association, the situation is working now. We’ve got parking, we’ve got slow-moving traffic, we have pedestrian use, and it’s all mixed together in one very narrow space. If you begin to divide those functions up, if you begin to take the pedestrians out and put them on a sidewalk, if you say we can’t have speed bumps because, as was said at Planning Commission, cars may actually become airborne — well, that’s pretty darned scary for residents.

“When there are public rights of way available that could be used and are not even being considered because of the protest that was raised by people who haven’t yet proven that they’re not public right of way, and haven’t yet proven that their roads are any less safe or more safe or what have you, then with this little driveway I begin to get the feeling that someone’s voice isn’t being heard.”

This concluded comments from people speaking in favor of the appeal.

[See Exhibit "C.2," submitted with these minutes, for additional letters, opposing the driveway access, from Lesley Lloyd; Martha Callanan; Bobby Jo Coleman; Jiandan Payza; Amy Stein; and Tobi Clement; as well as a petition with 85 signatures.]

Persons wishing to speak against the appeal came forward.

Ron VanAmberg, duly sworn

Mr. VanAmberg, attorney representing Rosa Development, stated that, as discussed by Greg Smith in staff's report, there was originally a question raised as to the appeal process from the Planning Commission to the City Council. He said he would note that the appeal ordinance states that, in preparing an appeal, "the applicant must set forth that such decision is illegal in whole or in part, and specify the grounds of illegality." He said, "I draw your attention to the fact that several years ago that there was not even an appeal right from the Planning Commission, and what we're suggesting is that the Planning Commission and staff has done a lot of work that, by your own ordinance, this appears to be a limitation on the scope of the appeal to illegality, and at the very least there should be a great deal of deference paid to the hard work of staff and Planning Commission in making these decisions.

"The only illegality raised by the appellants relates to a due process issue in that they weren't able to adequately address their contentions at the meeting. I would point out that what happened at the Planning Commission is that there was one session when there was a full, open hearing where the appellants in this case had a full opportunity to address the issues, and they took up more time than we did presenting that. They had the opportunity to make submittals, they contacted Commissioners outside of the hearing process — which we don't take any affront to. At the second meeting, it was told that staff had to go back and make some considerations concerning this issue. We reassembled several months later and staff at that point had some representations as to what its recommendations were, and it recommended going through the established easement to the south. Testimony was limited to any questions that the Commission may have had. They had a few questions of us, we answered them. That was the extent of it. There really was no ability on the part of anyone to continue the process that essentially terminated the meeting before."

Mr. VanAmberg distributed a map and plat (not submitted for the record) and stated that the easement "has been the contemplated access to this development for at least ten years."

[See additional testimony by Mr. VanAmberg following the presentation by Craig Watts. A speaker donated his time to Mr. VanAmberg so that he could conclude.]

Craig Watts, duly sworn

Mr. Watts, 4 Big Tesuque Canyon, stated that he has been engaged by Rosa Development to conduct an independent review of the traffic issues in this case.

Mr. Watts stated that three issues have been raised with respect to traffic.

Addressing safety, Mr. Watts noted that, that later in this hearing, someone would present information from the original project's architect "indicating that this project included originally the two phases and was planned for 96 units. What's being proposed as a total build-out today is 80 units, which is approximately 17 percent less units than was originally contemplated. The roads and the pedestrian facilities in the entire project were always planned to handle 96 units."

Addressing the character of the street already built in the subdivision, Mr. Watts said, "As you're aware, there are many streets in town that don't have all the right of way that the current standards have, but one of the things that this street does have is approximately 26 feet of pavement, and that's consistent with the subcollector standard that's listed in the Code currently. And if it were a public street, and if it were a subcollector, the Code recognizes that that type of a street could handle between 30 and 100 units — we're talking 80 — and that the traffic that would be generated by those units could be accommodated on that street."

Addressing discussion about traffic problems at the Paseo/Griffin intersection, Mr. Watts said, "I think we can all admit that the intersection may not have all the turning lanes that we might like to see out there if we were building it today, and that the offset distance that exists on Griffin between Paseo de Peralta and Rosario would be better if was more, but we've all driven through that intersection, and I haven't seen problems out there and I don't know that you have."

Ron VanAmberg, previously sworn, continuing his testimony

Mr. VanAmberg referred to "the easement that has been in existence since at least 1991" on a map and plat submitted earlier to Governing Body members. He said that, in November 1991, Pueblo del Rosario Condominium Association "granted to PDR, which was the predecessor in interest to Rosa Development, the easement to land known as phase two. This was recorded and this was in everybody's title policy. This was initially a single development, which was to be phased in. It was one piece of property, and it has always been contemplated

that the second half was going to be built out and was going to utilize that easement.

“In November 1992 there was a corrected easement, and again it was restated that there was an easement over to phase two, which is the property we’re talking about tonight. We are entitled to all utilities, all roads, all parking spaces, and all sidewalks. This was always contemplated to be an integrated community.

“In March of 1999, Judy Klinger, who was then president of the condo association, signed a maintenance agreement between our property and their property for this common easement, and it distributed the obligations in accordance with the percentage relating to the units that are being developed. That same year, the condominium association signed off on the plat, which again created this same easement. So it has always been the contemplated access to this phase of the development.”

Morey Walker, duly sworn

Mr. Walker, 905 Camino Sierra Vista, of Walker Engineering, read and submitted a letter from Lorn Tryk, original architect for Pueblo del Rosario condominiums, dated April 25, 2003. [*Letter submitted with these minutes as Exhibit “C.3.”*]

Mr. Tryk’s described in his letter that he was architect for the Pueblo del Rosario Condominium project in 1984, and at that time the project was conceived in two phases, with only phase one being actually constructed. His letter went on to state:

The purpose of this letter is to describe the original master plan and design intent for the project, including the phase two parcel, and how that master plan relates to the current proposal.

- The phase two parcel was designed to be accessed from the south, through phase one (now Pueblo Hermosa); there was no connection proposed to the north.
- The phase two parcel proposed 48 units, considerably more than the 32 units currently proposed.
- The existing driveway constructed through Pueblo Hermosa was designed to be able to handle the traffic generated by phase two.

- All internal roads in Pueblo Hermosa, as well as the phase two parcel, were designed to be slow speed, with pedestrians and autos sharing the road. Since the roads are all dead-ends, there is not cut-through traffic; only site-generated traffic.
- The narrow paving sections and on-street parking are designed to slow motorists down. This concept is used throughout the east side of Santa Fe, as well as on dead-end streets in recent projects in Tierra Contenta and Nava Ade. Further, many recent studies of traffic speed and pedestrian safety confirm that these design concepts slow motorists.
- The plans for a phase two, and the use of the driveway through phase one (now Pueblo Hermosa) was disclosed to the original buyers of phase one units, when the project was Pueblo del Rosario.

John Padilla, duly sworn

Mr. Padilla, 1925 Aspen Drive, Ste. 801-A, a member of the architectural design team for the Rosario Hill condominiums, said that his firm has been working on the design and development of this project since spring 2000; and since that time, the design team has developed numerous plans ranging from a 70-unit development to a 40+ unit affordable housing project. He said they have held six ENN meetings and have, each time, modified their plans to accommodate the neighbors' concerns.

Mr. Padilla said the final plan "has undergone significant review and comments from City staff to develop a plan that meets and/or exceeds the City's development codes for density, open space area minimums, terrain management requirements, parking requirements providing spaces for owners both in garages and open spaces, as well as spaces for guests. And it also meets the City's affordable housing units requirements as well as the landscape ordinance. And no variances have been requested."

Mr. Padilla said he wanted to make it clear that, with RM-1 zoning on 4.837 acres, the allowable density would accommodate 102 units. He stated that this 32-unit project fits into the City's General Plan for medium density development in this area with a density of seven units per acre, "and serves as a successful example of infill development... and is an appropriate transition development between the lower density residential neighborhood to the north and the more dense project to the south."

James Russell, duly sworn

Mr. Russell, 703 Paseo de la Loma, and president of the Near North Group Neighborhood Association, stated that the Association was officially recognized and registered by the City in 1988, and serves over 200 dwellings.

Mr. Russell stated that, with respect to the “so-called north access, you have in your packet a petition signed by 139 people living in the greater neighborhood who request that you please not use that access, that you use the access which was originally intended, which there seems to be some question in the minds of some people that it exists — it does.

“Secondly, with regard to the south end of Los Lovatos Road, we strongly support the position of Mr. and Mrs. Musgrave and Mrs. Rodriguez that it dead-ends twenty feet north of Rosa’s north property boundary, and therefore, there is no north access. The City Attorney has taken the position that it would possibly be needed to be decided in a court of law. I hope it doesn’t come to that, but I think the appropriate parties are ready to do that if it becomes necessary.”

Mr. Russell stated that, below the Cross of Martyrs, on Paseo de la Cuma, there is a blind curve with less than 17 feet for cars to pass. He said it is locally referred to as “dead man’s curve,” and “that’s where they want to put a lot of this traffic.”

[A letter from Mr. Russell is submitted with these minutes as Exhibit “C.4.”]

Tony Musgrave, duly sworn

Mr. Musgrave, 312 Vera Drive, said he had submitted a response to the appeal. *[Submitted with these minutes as Exhibit “C.5.”]*

Mr. Musgrave stated that his response included an abstract originally prepared in 1950 “that clearly shows there are two buffer strips that were not dedicated to the City at that point. The subdivision was replatted in 1965.” He said his submittals included two documents, one from the Planning Commission and the other the City Council minutes, both from 1965 and referring to the fact that “there are two streets to the north of this subdivision that will open to a new subdivision that has been planned there. That buffer on the south side was never opened, never intended to be open. And if we take the distance of the two lots adjacent to Los Lovatos, which are Lots 41 and 42 respectively, the distance on each one of those is 182.03 feet. The second one was 132.87 feet, for a total of 314.90 feet. The distance on the plat as shown and dedicated to the City is 294.90 feet, the distance being 20 feet, which is in fact the buffer. This buffer is not now, or has ever been, open to traffic. And, in fact, in our forty plus years

that we have lived on Vera Drive and Los Lovatos, it has never been maintained by the City.”

Mr. Musgrave submitted a letter from surveyor Morris Apodaca, “who has gone through the entire plat and the minutes of the City Council, and he concludes that the piece is not dedicated to the City.” *[Letter from Mr. Apodaca submitted with these minutes as Exhibit “C.6.”]*

Jerry Powers, duly sworn

Mr. Powers, a member of the development team for this project, said, “Our project has been thoroughly reviewed by staff for more than two years. As Mr. Padilla said, during that time we have made many modifications of the plan during the five or six ENN meetings that we held, both in response to staff’s recommendations and from the neighbors. It’s impossible to please all the people all the time, but I think it says a lot about the project that the project itself has not been opposed; only the access.

“Basically, what we’ve got are two choices. We had two choices to go either north or south. South is 500 feet of paved easement, 28 feet wide, that was designed by Mr. Tryk as an integral community. To break that community up by splitting the access one way for the residents on the south side of Pueblo del Rosario, and to go north, I think would destroy a lot of the workings of the community. As stated by Ms. Condon, it is working now — the traffic works well together, and it was designed as one project.

“Though this was the original designed access, and according to the appellant it works very well, I think it’s interesting to note that the proposed use, as Mr. VanAmberg stated, was disclosed to each and every buyer of homes in Pueblo del Rosario..... It is the only paved access to the site, it is the shortest route to the site, it impacts the fewest possible people, has been recommended by your staff, and is supported by most of the neighborhood. It also fits the desired goals of the community for infill development, as stated in the General Plan.”

[Additional response to appeal by Rosa Development, LLC, from Mr. Powers and Rosa Development managing member Gary Pierson, submitted with these minutes as Exhibit “C..7.”]

Maralyn Budke, duly sworn

Ms. Budke, 401 Vera Drive, spoke to the impact on Vera Drive, where she has lived for 33 years, and Piñon Drive, of the proposed north egress.

Ms. Budke said staff has listed an entire series of conditions if the Council were to open a north access, and have reaffirmed in January 2003

correspondence that all of those requirements would be part of their conditions for approval, including a requirement that Vera Drive be widened and paved. She commented, "If that were to happen at current grade level, those of us whose driveways now open onto Vera would be denied access to our property. The way I am told to get around that problem is to build up the level of the street by ten or twelve feet so it would not deny us access. That would in turn create severe flooding and runoff problems for the people east of us across Los Lovatos.

"The proposal would direct all traffic from the new area, plus the traffic that comes currently from further north, west onto Vera, because the City would require no left and no right turn signs. So [with respect to] the problems that Mr. Combs and others have talked about, which is a serious problem, there would be even more traffic directed to the Griffin-Paseo intersection, because all the traffic coming out of the new development, and all the traffic that now comes from further north would be directed west on Vera, down Piñon, would end up exactly at the same place."

Steve Martinez, duly sworn

Mr. Martinez, 217 La Cruz Road, said he has resided there for 43 years. He stated, "The density in the north neighborhood, and the roads were set up, for one house per half acre property. And over the years I've seen the traffic increase and increase, and it's gotten worse, but it's only expected as the neighborhood has filled up. But if the development is allowed to exit through the north access, not only will our traffic increase, it'll increase exponentially."

Mr. Martinez said perhaps five cars go by his house, which is on the corner of Vera and La Cruz, in an hour's time. He stated, "Some of their traffic numbers were saying 150 cars a day. I mean, the increase is incredible for that neighborhood and for roads that weren't designed to handle that kind of traffic." He said the quality of life of the residents would be negatively affected and the conditions would become dangerous for people who walk and ride their bikes.

Rudy Rodriguez, duly sworn

Mr. Rodriguez introduced his mother in the audience, Ernestina Rodriguez, who was 93 years old. He said his mother's property would be most affected by the Council's decision. He stated that his mother and father built this house over 40 years ago after being displaced from Roybal Street by the St. Francis Drive construction. He said that, prior to that, the family was on West DeVargas in the area of the employment office, and they were displaced from there as well.

Mr. Rodriguez stated that his parents, when they built their house, "really thought it was a dead-end street, and it has been a dead-end street, and that

buffer has always been there.... I pray that you really study this and see that this was never meant to be.”

Mr. Rodriguez said his sister bought one of the condominiums a few years ago, “and she always was aware that the access was always going to be for that development.”

Fernando Rodriquez, duly sworn

Mr. Rodriguez, son of Ernestina Rodriguez, asked the Council to reject this appeal. He said the family has been displaced a couple of times, and the property is not very big, and there was really never a street there, so it was not considered a City street. Mr. Rodriguez said putting a road there would bring the road almost up to his mother’s doorway, which was unnecessary.

Elisa Park, duly sworn

Ms. Park, 335 Rosario Hill, said she was “on the plateau right in the line of fire, and I’ve put up with a lot of covenants and conditions from the Pueblo del Rosario condos. I can’t see where this is going to make any densified problems for anyone using the north end, because the children, everyone is very slow. I haven’t seen anything that’s hard on the traffic over there. The children have come across my property to make a shortcut, and it’s a family run area. And I can see developing this hill will be the best thing that could happen, because people will slow down more because they will have children.”

This concluded public comment.

Councilor Pfeffer stated that there was a statement regarding “driveway versus easement” going south to Rio Grande, and he understood that this was indeed an easement. He asked Mr. Smith to comment.

Mr. Smith said, “Staff believes that there is an easement properly dedicated from the project site to Rio Grande.”

Councilor Pfeffer stated that the issue was raised that this is the second phase of an original project, and he understood there was a meeting room, etc., for the condos below. He asked if the meeting room, etc. would be accessible to the people above, or was this a separate property that has been sold off.

Mr. Smith responded, “It is clear that this property has been sold and is under separate ownership. Staff is not aware of any CC&R’s or other agreements that would allow the new project any rights to use the common facilities of the existing condominium other than the driveway.”

Councilor Pfeffer said he understood the 1999 General Plan wants to see traffic dispersed through a variety of streets rather than concentrated. He asked Mr. Smith if he thought this proposal, as approved by the Planning Commission, is consistent with that or not.

Mr. Smith responded that the 1999 General Plan discusses “three streets being located on 1,000 foot intervals. With or without this connection, the pattern of roads in this neighborhood is more or less consistent with that standard.”

Citing remarks by attorney Ken Cassutt, Councilor Pfeffer asked if a variance would be necessary with respect to the road width if the appeal were denied.

Mr. Smith responded that there is a table of standards in the subdivision regulations of City Code that talk about what level of street is applicable for public and private roads, and there is only one standard applicable to private driveways, the category in which this falls. He said, “It says that a minimum of a 20-foot-wide driveway is needed, and the table states that is suited for up to eight dwelling units. It’s kind of a hole in the standards, that is, a carryover from earlier versions of the Code. Previously, the standards in that section were applied only to subdivisions, and there is not a specific standard in the City’s regulations that talks about how many driveways, what sizes should be required where there are multifamily projects on one parcel or on two adjoining parcels.”

Councilor Pfeffer remarked that this is a relatively steep slope, and asked if there is any discussion about topography in the code with respect to this access.

Mr. Smith responded that there is a standard for the steepness of private driveways in the fire code, and the proposed driveway at 10% grade is consistent with those standards for steepness.

Councilor Pfeffer asked if staff was worried about the separation of pedestrian from vehicular traffic.

Traffic Division director John Nitzel said he was asked by the Planning Commission to look at the merits of the north or south access and to make a recommendation. He said, “The issue that was paramount in our recommendation was the relationship of the added traffic and pedestrian safety, and Greg Smith is absolutely right: the code does not have standards for private or easement type of access. So we compared the existing code, treating it analogous to a public right of way, because that was the closest comparison we could make for the magnitude of traffic that existed. And nationally, there is some inclination by other entities to consider driveways or private accesses similar if they carry similar levels of traffic, because there’s some logic to that.

“As to the pedestrian question, we felt that there was a need to consider the safety of the vehicles and the safety of the pedestrians that may potentially use it, particularly since there were two private entities using the same easement.... So we felt comparing it and recommending with respect to a pedestrian way, separate from a thruway, was a good safe decision in the interest of us, as staff, in recommending the most safe access.”

Councilor Pfeffer noted that the neighbors to the north have expressed concern about the so-called “dead man’s curve” that is only 17 feet wide, and Ms. Budke had mentioned the need to potentially widen Vera Drive. He asked Mr. Nitzel if the City has contemplated that if traffic were directed north.

Mr. Nitzel responded that staff has considered that. He said, “If that recommendation were selected, we made the stipulations from our perspective that a paved street meeting City Code should be provided from Los Lovatos west on Vera Drive to Piñon, which is paved. So if that option were selected, we would require that and a sidewalk at least on one side with curb and gutter.” He said Ms. Budke’s other concerns have not been looked at, however, but he agreed that there would be difficulties in building a street in that area because of the slopes.

Mr. Nitzel also clarified that staff would recommend that the developer pay the costs involved if that option were selected.

Councilor Pfeffer recalled statements by other speakers that Los Lovatos was never an access to this property because it falls 20 feet short, has never been maintained by the City, etc. He asked if the City has an opinion whether or not Los Lovatos could be used either for normal vehicular traffic or by City emergency vehicles, for that matter, “because it would seem to me that, per the Planning Commission, we’d have to find that Los Lovatos was an access way in any event, or condemn it.”

City Attorney Bruce Thompson responded that opinions in his office go back three or four years, and City Attorneys, assistant City Attorneys and staff “have all determined that there is in fact access to the north.” He said these opinions are based on plats dating back 35 years.

Councilor Pfeffer asked Mr. Thompson if he felt due process was denied to anybody at the Planning Commission for this case.

Mr. Thompson responded, “This is a case that is heard *de novo* in front of the City Council. If there was in fact any failure in front of the Planning Commission, it is clearly corrected by the fact that people had the right to come here tonight and present their case. I have not gone through the entire record of what happened below, but I believe that there would not be any due process problem

because the actions of the Governing Body would correct any of those problems.”

Councilor Pfeffer moved to deny the appeal and to accept the decision of the Planning Commission with the additional condition that the emergency gate at Los Lovatos be moved south to roughly divide the number of units equally between the two access points, and that, at the new location of the emergency gate, free pedestrian access be provided.

Councilor Pfeffer asked Mr. Thompson if this was a proper motion, given that this is an appeal.

Mr. Thompson responded that this is a *de novo* hearing, and the Council is supposed to make the decision based on materials given to the members, but it is also an appeal and there is some question about whether or not the parties involved have had an opportunity to consider that particular issue. He said, “It seems to me that the issue both sides have addressed has been the issue of whether or not access to the north is appropriate, so it seems to me the parties have had the opportunity to consider that issue. There might be objection raised by the parties. I believe they should have an opportunity to raise any objection. But my opinion right now, without having heard those objections, is that in fact that would be an appropriate motion.”

Responding to questioning from Councilor Bushee, Councilor Pfeffer said his motion would split the traffic equally between both access points but not dividing the development by the emergency gate, allowing pedestrian access across the gate within the new parcel.

Councilor Bushee questioned what Councilor Pfeffer’s intent was in his motion, because denying the appeal would mean that the access would be through the condominium project.

The motion died for lack of a second.

Councilor Lopez and Councilor Wurzbarger commented that Councilor Pfeffer’s effort at compromise was like “Solomon slicing the baby.”

Councilor Lopez moved to deny the appeal. Councilor Ortiz seconded the motion.

Councilor Heldmeyer asked Mr. Nitzel where the sidewalk would go; that is, would it go on the Pueblo del Rosario property.

Mr. Nitzel responded that the easement was 28 feet wide, and he thought the pavement was the same width, too, so there seemed to be room to fit two lanes

of traffic and a path (“or whatever you want to call it”) for pedestrian use to separate the two. He said it would be on the Pueblo del Rosario property, but the parking would have to go away.

Councilor Heldmeyer asked if she was correct, then, “that as part of a condition of approval for somebody else’s property, they would be required to accept a sidewalk and get rid of their parking?”

Mr. Nitzel responded, “It is an access easement. That’s a very good question as to how far we can go in that issue. The Planning Commission somewhat solved that issue in their wisdom and required that the applicant shall provide the sidewalk if it’s agreed upon by the condo association. Our concern initially was the provision of adequate safety for the road, so that’s why they recommended that.”

Councilor Heldmeyer said, “So you’re saying without the sidewalk there isn’t adequate safety, but Pueblo del Rosario is not required to accept the sidewalk?”

Mr. Nitzel responded that this was correct.

Councilor Heldmeyer commented that this is a difficult piece of property with no really good access in any direction; for that reason, she would be interested in finding out whether there is the ability to split access. She noted the City Attorney’s position is that access exists to the north, and it is the Planning Department’s position that access definitely exists to the south through the easement.

Councilor Heldmeyer recalled hearing one case similar to this as a Councilor, where individuals were in disagreement about access. She pointed out that it is not the job of the City Council to make those kinds of decisions, and the Council postponed the case indefinitely until the access issue was resolved.

Noting the motion on the floor to deny this appeal, Councilor Heldmeyer said she thought it more appropriate for the Council to find out what the conditions of this piece of property were before making a decision.

Councilor Heldmeyer proposed an amendment that the motion would not be put in force until the Council knows what the access conditions are to this piece of property; and that it be reconsidered at that time.

The amendment was *not* accepted as friendly.

Councilor Lopez said she thought the access question could be worked out if the Council decided to grant this appeal, but she was not in favor of granting the appeal.

Noting that the access would go up on the north side of the slope, Councilor Ortiz asked if staff would be comfortable with fire and police access to the property should the appeal be denied.

Mayor Delgado asked Fire Marshal Ted Bolleter, before he responded, if he had addressed this issue at the Planning Commission, and Marshal Bolleter responded that he had.

Marshal Bolleter pointed out that one of the conditions of approval is that emergency access would be available through the north side because of slope considerations with the southern access and also because response time from Station #1 at Fort Marcy would otherwise be doubled.

Councilor Ortiz agreed with City staff “that these appeals, once heard by the City Council, are *de novo* appeals. We can hear any issue when the issue is brought before us. And whether or not these questions are asked prior to this particular hearing, we’re allowed to ask issues that relate to this because we’re hearing it for the first time with the packet of information in front of us.”

Referring to the letter from architect Lorn Tryk [previously submitted as Exhibit “C.3” to these minutes], Councilor Ortiz noted that Mr. Tryk made several assertions essentially saying that the second phase of the project was designed to be accessed from the south through phase one. He asked appellant Milton Combs if he was aware of this letter and if there were any factual disputes that Mr. Combs would have to the statements made by Mr. Tryk.

Mr. Combs, previously sworn, responded, “I’m not aware of factual discrepancies or mistakes in the letter. It was originally intended to be one complete community and development; now it’s obviously two separate properties.”

Councilor Ortiz noted Mr. Tryk’s point that the plans for phase two “and the use of the driveway through phase one...was disclosed to the original buyers of phase one units when the project was Pueblo del Rosario.” He asked Mr. Combs if this was correct, and was that disclosed to him.

Mr. Combs replied, “To the best of my recollection, it was not. Let me clarify that by saying we had to qualify as first-time low to moderate income homebuyers through the Santa Fe Community Housing Trust through a lottery.... We may not have asked all the questions we needed to. I don’t remember anyone coming to me and saying, oh, by the way, there’s going to be traffic coming down the driveway.”

Councilor Ortiz asked Santa Fe Community Housing Trust director Sharron Welsh to respond.

Ms. Welsh, being duly sworn, responded, "It was never clear during the purchase process what the eventual outcome would be." She said the Housing Trust tried to buy both pieces of property, but the RTC "wasn't real negotiable, as you remember." She added, "The best non-legal non-title expert description that we had was that it was not possible to develop the upper property without the active involvement and consent of the lower property, and that was the best understanding that we had at the time. And there was a note on the original subdivision plat that wasn't finally signed off on, but was the best copy that the City had on record at the time, that said that the upper property would have to be part of the homeowners association of the lower property and considered as a second phase of the same project.... That was the best information we had at the time, and that was disclosed."

Councilor Bushee asked Mr. Smith if the easement still carries through as an access point to the subject property even though the properties have been legally split.

Mr. Smith responded that his signature is also on the plat to which Councilor Heldmeyer referred at the Summary Committee. He said that, when staff recommended approval of the plat to the Summary Committee, "we verified that in fact there was what we believed to be a properly dedicated easement that provided access to that lot. It was our opinion at the time that Los Lovatos also provided access to the lot at the time we recommended approval of the lot split. And as the testimony has already stated, the existing owners association did sign off on amendment to that easement immediately prior to the plat being recorded."

Councilor Bushee asked Mr. Smith if staff would recommend a condition requiring traffic calming.

Mr. Smith responded that, between the first and second Planning Commission hearings on this project, the Commission directed the developers to meet with the condo association to come to agreement on specific traffic calming measures. He said City staff did not participate in the negotiations or discussion. He said the Planning Commission did ask that staff ensure appropriate traffic calming measures be incorporated, however.

Councilor Bushee asked Mr. Thompson what conditions the Council could legally impose upon a homeowners association that is part of this legal easement.

Mr. Thompson responded that it would depend largely on what the easement says. He said he has never seen the document creating the easement, so didn't

know if there were limitations on what would be involved in the easement. He commented that this is a private access road, so didn't know what conditions could be placed on it.

Mr. Thompson additionally clarified that he has not seen the documentation on this easement because he has never been asked to look at it.

Councilor Bushee commented that this clouded the issue for her. She said, "If we're going to impact somebody's quality of life, we need to know how we can help to ameliorate that, if that's the direction this Council is going in."

Mr. Smith said the easement was in the record of the Planning Commission hearing; and staff concluded, although without the final authority of the City Attorney, that there were not specific provisions that clearly stated what the rights of the two properties were vis-à-vis pedestrian access, i.e., it neither precluded nor specifically allowed construction of the sidewalk.

Councilor Bushee asked Mr. Combs if some kind of pedestrian way would be acceptable, and Mr. Combs responded that they would prefer to keep the parking spaces and not have a sidewalk. He said the concern is not people walking up and down the driveway, but walking across it. He stated that parking cars along the driveway is probably the best traffic calming method available.

Councilor Bushee noted that the Planning Commission has imposed a condition calling for a sidewalk, though, but no one is sure whether they have to accept that. Mr. Combs conceded that this was correct: "We're in a legal bind there. If we refuse we may get sued, you may get sued."

Councilor Bushee asked Mr. Combs if he would accept, as a condition of approval of the denial of the appeal, that there be some kind of pedestrian access and that they would not have to accept a sidewalk. She said concerns about the Griffin Street and Paseo area would have to be worked out.

Mr. Combs responded that no one has come up with any ideas for the Paseo intersection and Rosario Hill Boulevard, which is the street that intersects very close to Paseo. He said that, as an additional consideration, they would ask that construction traffic not use the driveway.

Councilor Bushee asked Mr. VanAmberg if he would agree that the access point would not be shifted to the north but construction traffic in the interim would be shifted there, and Mr. VanAmberg responded that he would.

Councilor Bushee asked Mr. Nitzel if he had anything else he wanted to "throw in the mix" with respect to the Paseo/Griffin intersection.

Mr. Nitzel responded that the new traffic is only about one car every two minutes into the intersection, at the most, so it was not a significant load; and with either access, they end up at the same point. He said there have been historic complaints about this intersection and the City has increased the amount of “green time” for Griffin onto Paseo. He commented that this would be tweaked a little further.

Councilor Bushee asked Mr. Nitzel if staff would consider studying that crossing and coming up with some ideas for traffic calming. She expressed concern not only about the children walking to and from Carlos Gilbert Elementary School, but the possible increase of traffic as a result of the future of St. Catherine’s.

Mr. Nitzel responded that the City would contact the State Highway Department, because Paseo de Peralta is a state highway, as well as look into “beefing up” the cross guard situation there.

Councilor Bushee proposed the following amendments: Pueblos del Rosario does not need to accept a sidewalk, but wants a crossing, they want to retain their street parking, they want a crossing safely from one side of the development to the other, and some study of pedestrian crossing across the Paseo as future traffic compounds that.

The amendment was *not accepted as friendly*.

Councilor Lopez commented that the amendment seemed redundant, since the Planning Commission conditions give the Rosario condominiums the opportunity to accept or reject the sidewalk based on certain conditions. She added that any development at St. Catherine’s would require a traffic impact study.

Councilor Bushee moved the amendment. Councilor Ortiz seconded the amendment.

Councilor Heldmeyer asked if the amendment included the requirement that construction traffic go north, and Councilor Bushee responded affirmatively.

Councilor Ortiz *withdrew* his second.

Councilor Ortiz stated that he could not agree to this additional condition.

The motion then died for lack of a second.

Councilor Coss asked if construction traffic going to the north would go through Los Lovatos.

Audience members responded that it would go “toward dead man’s curve.”

Councilor Bushee pointed out that the attorney representing the other side accepted this condition, and audience members responded, “Of course he’d accept that.”

Councilor Coss said he heard the Fire Marshal say they had emergency access through Los Lovatos, and now he is hearing that construction traffic will go through there too, but he thought he heard Tony Musgrave say there is no access through Los Lovatos.

Mr. Smith clarified that Mr. Musgrave has testified at the Planning Commission and tonight that he and other neighbors would agree to an emergency access, but have the position that there is not access for other purposes unless the other property owners approve it. He added that it is staff’s position that this is a public right of way that was dedicated by a plat in 1967, and so it is the City’s decision, not the adjoining property owners’, to control access.

Councilor Pfeffer agreed that there are serious safety issues on both sides. He commented that perhaps “splitting the baby” 50-50 wasn’t the right thing to do, and perhaps it should be “one third/two thirds — two thirds below, one third above.... The question of applying speed humps and traffic calming, that’s all good and well below, but at the same time what we’re asking for is one side of this issue to accept all of the burden of it.” He pointed out that voting to deny this appeal would be saying that the issues of safety and traffic for one neighborhood should be ignored, but for the other neighborhood they should be upheld.

Councilor Pfeffer said he would propose a motion should the motion for denial fail to pass.

The motion to deny the appeal was defeated on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Wurzburger.

Against: Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Pfeffer; Councilor Bushee.

Councilor Pfeffer moved to accept the appeal with the following conditions: that the development, as approved by the Planning Commission, with all conditions, is acceptable with one additional condition, which is to move the emergency gate southward such that

approximately one-third of the units access from the north and two-thirds from the south.

Councilor Pfeffer said this would mean ten units would be on the north side and twenty on the south side.

Councilor Wurzburger seconded the motion for discussion.

Councilor Ortiz questioned how, in putting this emergency gate in the middle of the development, “we’re going to get around what has been the principal dispute on the north side access, which is the only way you can get to it is for an emergency, and that there is no private easement that will allow other vehicles to go across?”

Councilor Ortiz commented that he found it “amazing” that the Housing Trust would try to purchase a parcel in which the access was somewhat unclear, and questioned how they could have gotten title to the property without access.

Councilor Ortiz asked what would happen if the emergency gate were constructed as proposed by Councilor Pfeffer, and then some court of law or some other jurisdiction were to decide that the north access was not valid and they didn’t have proper easement.

Councilor Ortiz said what he found persuasive was that the architect, Mr. Tryk, has indicated in writing that this was one piece of property and then it was split. He stated that the law of easements says that, if one divides a piece of property, the divided piece has access through the original piece.

Councilor Ortiz said he thought the Council should insert conditions, in a reconstituted vote, that would address safety for the homeowners down below through traffic calming, and perhaps requiring the developer to provide some parking amenities and participate in some kind of traffic study that deals with the Griffin/Paseo/Rosario intersection.

Mr. Smith asked for direction on the level of improvements to the existing and proposed public roads going northward. He noted that earlier versions of the project, when they planned to take access northward, showed extensive improvements including pavement and sidewalks.

Councilor Pfeffer responded that the normal process “in terms of the developer’s share in the cost of such improvements would be applicable.”

Councilor Bushee asked Mr. Smith who decided which access option was more feasible or practical.

Mr. Smith responded that the original plans filed with the City showed access to the north using Los Lovatos. He said the applicant, of their own volition, after opposition surfaced from property owners to the north, submitted revised drawings which staff then recommended approval of to the Planning Commission. He stated that staff testified to the Commission that either access appeared to meet City standards.

Councilor Bushee asked Rosa Development representative Jerry Powers why they started out with Los Lovatos.

Mr. Powers, previously sworn, responded, "I think the reason was that the original point of access was considered by some of the predecessors to the property as being a more marketable and probably more lucrative entrance for that purpose.

"When we got involved, we drove those roads ourselves, we met with the neighborhood associations, and we met with staff. And in looking at overcoming the monumental problems to the north, we decided to respond to the neighborhood's request to switch the access to its originally intended point. The problems that Ms. Budke has brought up with regard to improving those roads — they're very narrow, 15, 16 feet in some places — and in order to improve them and widen them out, you would have to take out substantial improvements that have been built on the properties there. The driveways would be so steep that many people could not access the public roads. There's the dead man's curve problem. In trying to improve that area or widen that out, you'd have to undermine the foundations of houses that have been built there."

Mr. Powers said that, after talking with Mr. Tryk and the engineers and others, "it seemed that the original intention and design concept was the better one to us." He said this was also expressed in correspondence from John Nitzel, who favored the originally intended access.

Councilor Bushee asked Mr. Powers to speak to Councilor Pfeffer's suggested split, and Mr. Powers responded, "I think it would kill the baby. I think it would not make anyone happy, and it would probably cause tremendous problems with the flow within the development itself."

The motion was defeated on the following Roll Call vote:

For: Councilor Pfeffer.

Against: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez.

Councilor Heldmeyer moved to table this item for two months; in the intervening two months, the applicant is required to gather authoritative information about the presence or absence of an easement to the south and to the north; and when such information is available, that it is reevaluated by Planning & Land Use staff and Traffic staff.

Councilor Coss seconded the motion, which was then defeated on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Coss.

Against: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez.

Councilor Ortiz moved to deny the appeal and approve the decision of the Planning Commission with all conditions, with four additional conditions:

- 1) That the developer agrees to participate in installing traffic calming devices along the easement with the consent and involvement of the homeowners association;**
- 2) That the developer participates with the homeowners association in the decision to have or not to have the sidewalk along the easement;**
- 3) That the developer participates again with the association and with the City Traffic Division and Traffic Calming staff to come up with solutions to the Paseo de Peralta/Griffin intersection; and**
- 4) That the developer participates with the homeowners association to provide uninterrupted pedestrian access through their property for the individuals in the homeowners association.**

Councilor Lopez seconded the motion.

Councilor Bushee asked Councilor Ortiz if his motion included that parking would remain on the street.

Councilor Ortiz responded that this was correct, and should be part of Condition 2.

Councilor Bushee moved an amendment that construction traffic be directed to the north. Councilor Chavez seconded the motion, which was defeated on the following Roll Call vote:

For: Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Heldmeyer.

The main motion then passed on the following Roll Call vote:

For: Councilor Ortiz; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Lopez.

Against: Councilor Pfeffer; Councilor Heldmeyer.

Case #A 2003-04 --- APPEAL. Maria Baca, Lawrence Baca, and Mariano Romero Appeal the Decision of the Planning Commission to Approve The Lofts at Marquez Place. Case #M-2002-42, Lofts at Marquez Place Development Plan Amendment for Development Plan Approval of an Office and Residential Condominium Project, to Increase Allowed Floor Area to 58,250 Gross Square Feet Excluding Mezzanines and Interior Stories, Plus Up to 16,000 Square Feet of Mezzanines and Interior Stories. The Property is Located on the North Side of Marquez Place Between Don Diego Avenue and Early Street, and is Zoned C-2, General Commercial.

City Planner Greg Smith reported as follows: "We're looking at a case that was reviewed and approved by the Planning Commission on February 6, 2003. The Commission's staff report, with their conditions of approval, are in your packet.

"The Council, of course, was involved in the history of this. There was an executive session with the Council and staff prior to the Planning Commission hearing on this project, and we went into some of the history and background. I won't repeat that in detail in this presentation.

"The basics of the application in the appeal, the project was approved in a settlement agreement based on 38,000 square feet of net usable floor area. The City staff agreed with the applicant that that meant about 53,000 gross square feet, but did not agree with the applicant's position that the original approval of the project included 16,000 square feet additional. So the staff agreed with the developer as far as 38,000 net, 53,000 gross. The staff did not agree with the

developer that the settlement entitled him to 69,000 square feet gross. And so the applicant applied to the Planning Commission for the 69,000 square feet gross as a separate and new application from the one that the Commission had approved previously and that had been the subject of the settlement agreement with the City Council.

“The 69,000 square feet gross would be completely within the envelope of the buildings that were approved by the Planning Commission and are a part of the settlement agreement with the Council. The City staff has reviewed the traffic impact analysis that was done by the developer’s traffic engineer and has concluded that the traffic analysis done with the original project does properly evaluate the impacts of the 69,000 square foot gross, since the original traffic analysis compared traffic impacts from similar types of units on the Cerrillos Road Lofts project that was developed by the same property owner.

“Staff concludes the proposed amendment to the development plan does meet code requirements and would not make significant changes to the project’s appearance or traffic generation. We recommend to the Council that they uphold the Planning Commission’s decision to approve the project. We recommend that the Council deny the appeal on this case.”

Mayor Delgado asked persons in opposition to the appeal to come forward first.

Don Wiviott, duly sworn, opposed to appeal

Mr. Wiviott, 3600 Cerrillos Road, #718, stated, “The reason we’re here is that the form of the motion of the planning agreement three years ago regrettably used terms that are not divided in the C-2 code. As we worked with staff, what we have arrived at are ways to permit the interiors in a mixed-use project using definitions that exist in the C-2 code. The City right now does not have a separate portion of Chapter 14 for mixed-use development.

“The Lofts at Marquez Place is not asking for a single variance. We’re not asking for any special exceptions. We’re only asking for what is already allowed for within the C-2 code. The size and shape and footprints of the buildings remain the same. There has been misinformation that we’re trying to add buildings, and that is not correct. So where do the 16,000 square feet come from? The 16,000 square feet is building out people’s bedrooms. It is all mezzanine space, it is all interior storage space and it not a separate part of a person’s loft. It *is* the loft. We have always intended to build lofts at The Lofts.

“In the past we have had shell permits, and then we’ve gone back in for separate interior permits because they’re all custom spaces. So to know in advance what each person wants is almost impossible.

“So that leads me to another point, and that is on subdividing the units. The word, unit, is subject to interpretation within the C-2 code. We could not arrive at a definition of unit with staff. So what we’ve agreed to is to permit the space according to what people’s requirements are. We have some people that want maybe two small downstairs spaces back to back. We need the ability to sell small spaces, because we want to satisfy the 11 percent requirement for those spaces that are eligible for the Community Housing Trust or for Neighborhood Housing Services. It’s important for us to be able to satisfy what people need, and that means small units, medium units, and large units. Again, the size and shape of the buildings aren’t changing, and with C-2 code, for instance, if you have an office building, you build the building, it’s a shell, and you go in for interior permits to decide how that’s going to be divided up within the shell. We want to do the same thing.

“The word, usable, was used in the Planning Commission motion. There is no definition of usable in C-2. So we also have a high percentage of residential buyers. What I would ask specifically is, as Greg Smith has stated without condition in his memo to the City Council, that the proposed amendment to the development plan meets code requirements and would not have significant impacts on the project’s appearance or traffic generation.

“The Council should deny the appeal and uphold the decision of the Planning Commission to approve the amendment to the development plan.

“Also, I would like to make sure that the developer’s amendment report is included as part of the record.” *[Submitted herewith as Exhibit “D” to these minutes.]*

Mr. Wiviott stated that this is good development because it is “a sustainable community with cisterns, special programs for nurses and teachers and law enforcement people. We have energy star-rated buildings so we’ve attracted the attention of Senator Domenici, because he heads the energy committee. We have a 30,000-gallon cistern and we’ve already replaced 445 toilets in the city of Santa Fe. We are not messing around with water issues.”

Teresa Lopez, duly sworn, opposed to appeal

Ms. Lopez, owner of Spirit Money Mortgage Services, residing at and with offices at The Lofts at 3600 Cerrillos Road, #506, said she has just purchased a new unit in the Marquez project where she plans to move her company.

Ms. Lopez stated that the future of this community and the platform of Governor Richardson is based on sustainability, as is in her company, because it

creates financial mechanisms that support community, affordable housing, and green building in particular. She said she relocated her offices to New Mexico specifically because of “Don Wiviott and The Lofts and the Governor’s platform.” She said she has not found any other project “that stands for the type of community support and cohesive green energy sustainability and mixed use in any part of the country, and I think that this project is really critical to the future of the development of the state.”

Ms. Lopez said it would be “criminal and heart wrenching” if this project were not approved.

Mitch Davenport, duly sworn, opposed to appeal

Mr. Davenport, a partner in and project manager for The Lofts, pointed out that concerns about water are not a reason to support this appeal. He said The Lofts has always been a water conscious builder, and at the Cerrillos Road location they installed a magnetic conditioner system to a heating and cooling system “that cleans the water so well that you can change the water a lot less often. It will save millions of dollars over the life of this system.” He stated that the Marquez project has 30,000 gallons of underground cistern storage, which will be reused for landscaping. He pointed out that this captured stormwater would supply 97% of the project’s annual water demands for landscaping.

Mr. Davenport continued, “We haven’t asked for or have been given any credit for that as far as retrofit responsibilities, and we’re still doing the retrofit responsibilities as if we were still going to use all of that landscaped water.”

Mr. Davenport said they are installing greywater systems for the last two buildings, and would have done it for the first two had the legislation been in place to allow it.

Mr. Davenport pointed out that The Lofts was one of the first projects in Santa Fe to get involved in the retrofit program, and to date have retrofitted 450 toilets at a cost of \$240,000. He said that, according to the Water Division, these retrofits have saved 1.8 million gallons; and because the retrofits were done so early in the project, “we estimate the City could save as much as seven million gallons before all of the new toilets are even installed.” He said the retrofitted toilets in the Marquez project would save more than five million gallons of water per year.

Mr. Davenport also stated that this project would not increase the water demands on the City of Santa Fe, no matter what the square footage is, because they will do the required retrofits.

Mr. Davenport added, "Finally, please keep in mind that the retrofit requirements assume landscape irrigation use. Due to the cisterns, we will only use three percent of that assumed usage."

Morey Walker, duly sworn, opposed to appeal

Mr. Walker, Walker Engineering, 905 Camino Sierra Vista, said his firm conducted the traffic study for the Marquez project by counting the number of buildings at The Lofts on Cerrillos, figuring out how much traffic they generated, and extrapolating the figures for the Marquez project. He said the traffic figures therefore would not change regardless of how the square footage is addressed.

Mr. Walker also stated that, for the Marquez project, they increased the Cerrillos Road traffic generation figures by 30% in the morning and 20% in the evening "just to be conservative and to make sure we covered all our bases. So we're actually more conservative than what the actual traffic counts are." He added that this traffic study was done while Alfalfa's was open, so obviously traffic in the area has gone down now that it is closed.

Gabriel Brown, duly sworn, opposed to appeal

Mr. Brown stated that he lives at The Lofts at 3600 Cerrillos Road, #305A, and has his architecture firm there. He said he designed The Lofts at Marquez Place as well as some of the Cerrillos Road project.

Mr. Brown stated, "Essentially, the Marquez Place Lofts was not our first Lofts project. We have an example to go by, and we did that when doing our parking study. As [Mr. Wiviott] points out, we planned from the very beginning to have The Lofts included in this project; and because of that, our parking calculations accommodated the square footage and the use of The Lofts itself. So the long and short of it is that this proposal....does not affect our parking situation."

Mr. Brown said they also did a supplementary parking study. [See colored tabs in previously submitted Exhibit "D."] He noted the "worst case projected use" scenario (blue tab), reflecting mixed use commercial (in blue) and residential (in green), and assuming that the project would have heavy commercial use. He stated that, at this point, two-thirds of the campus is reserved and has a heavier residential component than expected, which minimizes parking and traffic issues. He said it is now expected that at least 50% of the project will be residential.

Mr. Brown distributed a second parking study consisting of photographs taken of the parking areas at The Lofts on Cerrillos Road during peak commercial daytime use, and pointed out that the photographs demonstrate that there is a

considerable amount of parking available. *[Submitted with these minutes as Exhibit "D.1."]*

Frank Herdman, duly sworn, opposed to appeal

Mr. Herdman, attorney representing The Lofts, said he also represented The Lofts in its appeal to the district court in 2000.

Mr. Herdman said he would touch on issues raised by the appellant before the Planning Commission with respect to the stipulated settlement agreement, as he anticipated those would be raised again tonight.

Mr. Herdman stated, "I want to emphasize that the proposed amendments to the development plan that have been requested by The Lofts do not result in any modification or amendment to the stipulated settlement agreement that was signed in May 2001.... In this case, the applicant is simply requesting an amendment for clarification to the development plan that was approved by the Planning Commission and upheld in the appeal process. The development plan exists separately and independently from the settlement agreement.

"The appellants have stated some basic misunderstandings about the agreement and what it says. First, the agreement does not state that the development plan can never be amended. At the Planning Commission hearing two months ago, the Commission chairman, Dean Milligan, correctly stated, quote, 'The settlement is based on the original Commission approval,' end quote. Also, Greg Smith stated at the Planning Commission, 'Staff has determined that it is within the jurisdiction of the Planning Commission to act on amendments to the original approval.'....

"In their arguments to the Planning Commission, the appellants referred to the first sentence in paragraph four of the settlement agreement.... that says, 'There shall be no further proceedings before the Council or the Planning Commission by remand or otherwise on the request for development plan approval that is the subject of this appeal.' The appellants have clearly misinterpreted that provision. The sentence was included in order to confirm that The Lofts did not need to return to the Planning Commission on the original request.

"So there's absolutely nothing in the settlement agreement stating to the effect that the underlying development plan approval cannot be amended as it has been."

Anne Condon, duly sworn, opposed to appeal

Ms. Condon, 110 Calle Royale, said she was speaking for herself tonight, and not as a former City staff member nor as a hired representative.

Ms. Condon said, "I want to share with you how very sad it makes me that this is here again, going through a public review process, when a tremendous battle was waged to make this project possible several years ago. And I lived through it the first time, and it broke my heart the first time when it was turned down and had to go to court. And it's breaking my heart again.

"I know from being the Planning director at one time how hard we are on innovation. It is so easy to do banalities in this town. It is so easy to do the routine. It is so hard to try something new.

"And the fact that we still don't have a mixed use zone six years, seven years after the General Plan was adopted. When staff feels empowered to do so, they can take this ancient, decrepit, medieval zoning code and they can make it work for how we live today in the twenty first century. When they feel uncertain and unempowered, you get cases like this in front of you.

"Every time [Mr. Wiviott] goes through this routine, it adds about \$10,000 to the cost of the units, and that is very personal to me because I am trying to buy one... because I need a place to live in the neighborhood where I've lived for eight years, where my children can visit me, where they can live and sleep in the loft above and still walk to the home their father is going to have. I need a place where I can work, I need a place where I can sublease space so I can pay my mortgage, and I need a place to paint. I'm a few blocks from my church. I'm a few blocks from my bank. I'm a few blocks from the grocery store. I'm near my favorite restaurants. Why are we doing this again? Why can't we just let this happen? Please: interject some sanity into the development review process."

Tom Knoblauch, duly sworn, opposed to appeal

Mr. Knoblauch said he has worked extensively with some of the proponents of New Urbanism around the U.S., including Peter Calthorpe, one of its leading proponents. He stated, "I think this development fits with the finest examples of a pocket development that we can imagine. It's small; it's contained, and Mr. Wiviott has given up much to get approval when he didn't really have to in the beginning, but he has wanted the goodwill of the neighborhood and the City."

Mr. Knoblauch stated that The Lofts creates a residential community in a neighborhood of businesses where the surrounding streets include a tire place, St. Vincent de Paul, Party Store, and a variety of commercial establishments. He said residents would be near banks, churches, restaurants and grocery stores that are within walking distance.

Ed Boniface, duly sworn, opposed to appeal

Mr. Boniface, a resident of 1024 Don Cubero for about eight years, said he has seen many changes in the 31 years he has lived in Santa Fe, some good and some bad, and thought The Lofts would be a very good change for Santa Fe. He said his backyard will be about 100 yards from The Lofts and will probably be visible from his backyard once it is built.

Mr. Boniface said there has been a lot of talk that there are many people in the Don Diego neighborhood who oppose The Lofts. He stated that no one has ever asked his opinion of this project, however, either by knocking on his door or approaching him in any way. He said he therefore decided today to walk up his block, on his side of the street, and ask neighbors to sign a petition expressing support of The Lofts on Marquez Place. He said, "Lo and behold, of the eight people that I asked to sign the petition, only one said they wouldn't."

[Petition submitted with these minutes as Exhibit "D.2."]

Trey Jordan, duly sworn, opposed to appeal

Mr. Jordan, 1182 Cerro Gordo, asked the Council to deny the appeal. He said, "From so many aspects it makes such brilliant sense.... You couldn't ask for a better transition between the back end of Osco and the old car dealerships, and these sweet little one-story houses that make up that portion of the South Capital.... This is a product we need more of in Santa Fe.

"As a small business owner, as a homeowner, as a citizen of Santa Fe, I think that this Council is very good at saying no to a lot of things.... You've got the ability to say yes to this project. You've got to take the word of the consultants, Planning Commission, all the people that quite frankly know a lot more about these issues than you do. You have too many other things to deal with."

Joseph Henry Sharpe, duly sworn, opposed to appeal

Mr. Sharpe, 705 East Alameda, Unit #2, said his lease expires at midnight tonight, "and I was hoping to be in 105A at The Lofts at Marquez. I'm one of the people that are going to be living there. I'm part of the Community Housing Trust."

Mr. Sharpe said he came to Santa Fe in 1991 "to die. I'm a longtime HIV survivor. And I found, lo and behold, that I actually moved here to live. But it has been very difficult to live here because I'm a writer. I have two books published in five different languages by major publishing houses, a third one is getting ready to come out.... it's a great profession, but it doesn't make a lot of money.

I'm one of those working artists, struggling people, that actually fits into the under \$35,000 requirement needed to get something through the Community Housing Trust."

Mr. Sharpe asked the Council to allow the "letter of the law to fit the spirit of the law — because if we don't have big, medium and little, if we don't have the little, I can't live there."

This concluded comments from people in opposition to the appeal.

Persons in favor of the appeal were asked to come forward.

Maria Baca, duly sworn, in favor of appeal

Ms. Baca, 520 Don Canuto, and president of the Don Canuto Neighborhood Association, stated, "I believe we are here not to discuss the viability of The Lofts or how great they are, or how many toilets they have installed. I believe we're here to talk about the amendments to the approved plans and how it will affect our neighborhood." Ms. Baca asked the Council to keep in mind that she was speaking for "the vast majority of approximately four hundred households."

Ms. Baca read from a prepared statement. *[Submitted with these minutes as Exhibit "D.3."]*

Ms. Baca's statement concluded that the action of the Planning Commission: "1. Violates the letter and spirit of the stipulated settlement agreement and order (May 29, 2001); 2. Fails to address additional parking required for increased density; 3. Fails to properly consider the plan amendment's general impact upon the future public's health, safety and welfare.

"Our neighborhood is stuck with an inappropriate infill project that the majority of our neighborhood did not want in the first place. It is experimental, volatile, unpredictable and already very high density. Please do not make it worse."

Michelle Quant, duly sworn, in favor of appeal

Ms. Quant, a member of the Don Canuto Homeowners Association, said, "This is outrageous. This is not about sustainability; it's not about viability. This is about someone who made a very poor calculation at the very beginning of this project, and we're here because The Lofts development needs to subdivide more units in order to turn a greater profit for their investors.

"Please consider very carefully changing the word usable so that it accommodates changing net to gross. If the precedent has been set here that usage can be malleable, and words like units are malleable, and now we're down

to shells — what does this mean for the C-2 zoning ordinance, in the understanding of that definition and what it encompasses?”

Ms. Quant said she was also concerned over Mr. Wivott’s contention that he has sold a larger percentage of residential units. She commented that businesses are bought and sold everyday, and there is no guarantee that this mixed use community will remain as such. She pointed out that this is “a choice commercial location with a great view.” She asked the Council to consider the implications of full commercial use on 2.6 acres.

Laura Wilson, duly sworn, in favor of appeal

Ms. Wilson, of 1107 Don Cubero, and past president of the Don Diego Neighborhood Association, said she has worked on at least half of the ENN cases on behalf of the neighborhood and knows firsthand how difficult this work can be.

Ms. Wilson stated, “This is a serious situation and stands to affect the entire Don Diego neighborhood with or without this change.” She asked the Council to consider the points raised by Ms. Baca and “hold The Lofts to their original proposal. They have gotten everything they asked for.”

Carolyn Huggins, duly sworn, opposed to appeal

Ms. Huggins said she moved to Santa Fe six years ago from New York City, and made a commitment to stay here and teach, and never expected to be able to afford to buy her own home here. She stated that she is very grateful for Mr. Wivott’s vision “for people like me.... I do want to live in a secure place and be part of the community and contribute and see the fruits of my contribution. And this development is the first opportunity I’ve seen for me to live here and flourish here and watch the kids I teach flourish.”

This concluded public comment.

Responding to questioning from Councilor Chavez, who noted the suggestion that the City use parking standards defined in the C-2 code, Mr. Smith responded that the requirements are not unique to C-2, and apply throughout the City’s residential and commercial districts. Mr. Smith added that, when staff recommended approval of the original project and the amendments to the Planning Commission and Council on appeal, “it was staff’s position that it was better to be conservative and have more parking spaces than might ultimately be required... Our analysis showed that the more commercial, the higher the number of spaces required.”

Councilor Chavez said he also understood that the Housing Trust units were not shells but, rather, turnkey units.

Mr. Smith responded that this was correct.

Councilor Bushee read from the stipulated settlement agreement, which stated: "There shall be no further proceedings before the Council or the Planning Commission by remand or otherwise on the request for development plan approval that is the subject of this appeal" and asked City Attorney Bruce Thompson why the Council was hearing this, then.

Mr. Thompson responded that it was because this was not the original appeal. He said the original appeal was over with based on that language, and this is a new action and this language does not preclude reconsideration of additional action.

Councilor Bushee asked, "So you believe that we have the ability tonight to reconsider or reinterpret the original decision?"

Mr. Thompson responded, "You're not reinterpreting what was actually decided by the court or what was settled on in the stipulated settlement agreement and order. What you're doing is considering a different aspect of the same project. This does not preclude you from moving on, this does not preclude any future developments, any future planning, any future changes to what was already considered. All this language says is that what was requested at the time of the original application is now over with and there can be additional actions in the future, and that's what's happening now."

Councilor Bushee said she understood from the developer, however, that this was not requesting anything new or anything that was not already presented in the original development plan.

Mr. Thompson responded, "To the extent that it is new interpretation, that's not what was decided originally. There has to be interpretation to the extent that that's what was being requested. You can't say that the matter will never be interpreted in the future if there is some ambiguity."

Councilor Bushee asked what was ambiguous, and Mr. Thompson responded, "The question of the interpretation of what was actually agreed to before. To the extent that that's what they are asking to have done, there's no way you can say that that can never happen in the future. This agreement does not preclude that."

It being midnight, Councilor Lopez moved to suspend the rules. Councilor Wurzbarger seconded the motion, which passed 8-0 by voice

vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzbürger voting for, and none against.

Councilor Coss asked Mr. Smith how many units would be involved should the project be allowed to increase the square footage.

Mr. Smith responded that, as approved by the Planning Commission, there would not be a limit to the number of units. He said the developer has testified that it is difficult for him or the staff to arrive at a consistent interpretation of the term “unit” in the context of a mixed-use project. He stated that a dwelling unit is clearly defined in City Code, but a commercial unit is not a term found in City Code. He stated that the amendment seeks to eliminate the reference to units in this project and to rely on gross square footages.

Councilor Coss disclosed that he had breakfast with Mr. Wiviott a few weeks ago to talk about economic development, and they did not discuss this appeal.

Councilor Wurzbürger asked if she was correct that “We sent [the developer] back to Planning Commission again to get a clarification of what Planning Commission meant when they were giving their approval, and that has now come back to us with staff’s recommendation to accept the Planning Commission’s interpretation of their own action?”

Mr. Smith responded, “The semantics are tricky, but I think procedurally they are important to the staff. The staff report to the Commission was based on the applicant’s application to amend their previous approval. It may have been that that was their intent all along. It was staff’s judgment that the record did not support that that was their intent.... [so] staff advised, and they agreed, that they had the option to appeal to amend the previous approval to 69,000 gross.”

Councilor Wurzbürger asked if she was correct “that if we didn’t have Lofts number one, which went through a similar kind of process providing similar kinds of units, to use an example, and they were relying on that for their interpretation of what was being approved.”

Mr. Smith responded that staff agreed with the developer that the evaluation of parking impacts is based on “a reasonable interpretation of what they did before.”

Councilor Wurzbürger moved to deny the appeal and support the decision of the Planning Commission. Councilor Ortiz seconded the motion.

Councilor Lopez said some people have expressed concern that the number of units could burgeon to a hundred, and asked how people could be protected from that possibility.

Mr. Smith responded that the Planning Commission action was to eliminate any limit on the number of units per se, and “to say that the intensity of the development is limited by square footages without regard to how that square footage is divided into units. Staff and the developer encountered a great deal of difficulty in trying to determine how a unit would be constituted in the terms of a commercial development. Was it how many entries they had? Was it how many bathrooms they had? How would you count the hallways — you know, multiple units off of the same hallway kind of a thing. Staff’s recommendation for Commission approval was based on an analysis that the impacts of the project, particularly with regard to commercial development, are related more closely to the square footages than they are to how that square footage is divided.”

Mr. Smith said staff’s recommendation to the Commission, and his understanding of the Commission’s action, “was that they did not intend that the project be limited to 38 units. The gross square footage could be divided into more than 38 condominium ownership units, according to the action of the Planning Commission.”

Councilor Lopez asked Mr. Wiviott if it was his intent to have more than 38 units.

Mr. Wiviott, previously sworn, stated that the number 38 comes from the footprints, which remain unchanged from the original plan. He stated, “If you substitute the word ‘footprints’ for ‘units,’ which is what we’ve done in the past, that was our intention. The word ‘units’ was used in the motion at the Planning Commission....

“I have people who are buying a footprint and a half; I have people who are buying one-half of one. So the answer to your question is that, by having smaller spaces, medium spaces and larger spaces, I do not know — although we have sold a reserved 60 percent of the project — the exact unit count.

“And also, within a C-2 zoned property, for instance if you have an office building, you permit the building and then you get interior permits for each individual office as you find the tenants....

“If the concern is to have a hundred units on that site, that means it’s crawling with tiny businesses and [there’s] a lot of impact. That’s not going to happen [because] by having smaller units, those become residential units. There’s a much higher demand for residential because it has a higher value per foot in Santa Fe, there’s such a demand for housing.

"As far as the exact unit count, I can't tell you, but it won't be a hundred. And as far as the gross square footage, how we got from 38,000 and 38 units, usable is not defined. And when we were looking at net leasable per footprint, those numbers come out about right for shells, which is what we've permitted in the past. I really apologize, but these are very complex issues. They can be satisfied by permitting parking according to gross heated area, very widely accepted standards for residential throughout the city and throughout Chapter 14, and also for permitting parking according to net leasable square footage, which is a much stricter standard...."

Councilor Lopez asked Mr. Wiviott if he would agree to 38 units, "whether they're one and a half footprints, or a half footprint or whatever?" She commented that she had not understood until tonight's hearing that Mr. Wiviott was "thinking of just having kind of a free limit on the number of units that you have.... I mean, didn't we already agree on 38? That's my problem."

Mr. Wiviott responded, "I need to know what a unit is."

Councilor Lopez said a unit would be something where people own a deed to it. She said she was referring to subdivision, where there are separate owners: "Instead of 38 separate owners, all of a sudden you have condominiums, and in one of your footprint buildings, all of a sudden we have three owners instead of one."

Mr. Wiviott responded that this is a legal condominium.

Mr. Wiviott said, "I'm just asking on a C-2 zoned property to be able to build to C-2 standards. I'm also volunteering that we're self limiting on parking and density issues to a much higher standard than would be evident in a project that's got 50 percent residential, 25 percent mixed use that's residential and 25 percent commercial."

Councilor Lopez commented that the units seem very clearly defined to her when she drives through The Lofts on Cerrillos Road.

Mr. Wiviott responded, "When you say that, are you saying that a unit is a downstairs plus an upstairs exclusively?" and Councilor Lopez said she always understood it to be that. Mr. Wiviott commented that this was not the case: "For instance, we have people that are handicapped. Instead of having upstairs and downstairs space, they essentially have two halves side by side.... In our terminology, we call them half units. A half down or a half up. We also have people that have bought two half downs and a half up. I'm sorry it's so confusing."

Councilor Lopez asked if Mr. Wiviott was saying, then, that the 38 units could be doubled into 76 half units, and Mr. Wiviott responded that not all of them are easily divided into halves. He said some people in the audience tonight have purchased two halves downstairs and a half upstairs, and that is permitted as one unit.

Responding to questioning from Councilor Pfeffer, Mr. Wiviott stated that traffic generated by this project would decrease as the number of residential units increased. He said there would be no difference in functions, and the heights of the buildings would remain the same, as would the square footages on the footprint. He stated that the numbers of buildings would remain the same as well.

Councilor Pfeffer said he would support the motion to reject the appeal because he believed that was what the Planning Commission meant when it considered this project, and that these were the issues of importance to the neighborhood at the time. He said, "Unless the buildings are getting bigger or taller, or there's going to be more cars — in my way of thinking, it doesn't matter a whole heck of a lot that we don't have a definition of unit."

Councilor Bushee stated that she based her decision at the last Council hearing on this project on intensified uses: "I was pretty much told by the neighborhood that they would rather have a postal sorting industrial-commercial center there because they could be guaranteed that cars would come from nine to five.... They knew what the uses would be, they would know what the parking requirements would be and they would know what the impacts were. So it's really dismaying at this point though. We worked it out, we went to court, Councilor Chavez and I really made some concessions, we got the eleven affordable units in there, and that seemed to settle this."

Councilor Bushee expressed concern that usage could expand in the future and there was no guarantee that the residential use would remain at 65%. She said people should have some reasonable assurance as to what 38 units and 38,000 square feet means.

Mr. Smith remarked that staff shared Councilor Bushee's concern about the importance of arriving at a clear definition, "and had we to do it over again, we would have asked the Planning Commission to clarify, in their 38,000 square foot approval, what that would translate to as far as gross square footages."

Mr. Smith said staff would continue to monitor the mixture of uses to ensure compliance with the parking requirements on this project, just as it does with other mixed-use projects in the city.

Responding to concerns of Councilor Coss about staff's ability to monitor leased parking agreements, Mr. Smith agreed that staff has reported to the Public Works Committee in the past that there has been little effective enforcement of offsite leased parking agreements. He said, "Those have been and will continue to be more difficult to enforce than will the permit process where the parking is provided on the same property. I'd also advise the Council that the staff's ability to track those has improved significantly in recent years with the advent of computerized databases and easier access to historic records of permits. Staff cannot guarantee you that the enforcement of those will be perfect because there may be a small number of people who get away with violations of the code in conversions without permits. But we can give you assurances that there will be substantial enforcement of the parking ratio requirement."

Mr. Wiviott pointed to the success of mixed use parking arrangements, because residents are gone during the day while business uses are active, and then residents return at night when the businesses are closed. He said an example of this could be found in the photographs submitted earlier of parking lots at The Lofts on Cerrillos Road, which reflect "vast amounts of empty parking spaces." He said the planned parking at the second Lofts project could support 70-85% commercial use.

Mr. Wiviott commented, "If you want mixed use to be built, you're going to actually have to give a builder a permit. Either that or just bite the bullet and say, look, we're going to live with suburbs; we're going to have sprawl. So people live over here and they work over there, and you can't put the two together because we can't agree on definitions."

Councilor Heldmeyer proposed an amendment that the developer or subsequent management company be required to notify Planning whenever the use of a unit, whatever they are calling a unit, changes hands whether or not it triggers a change in structure that would require a building permit.

Councilor Wurzbarger asked if she understood Councilor Heldmeyer's intention was to facilitate the City's monitoring of a change in parking permit.

Councilor Heldmeyer responded affirmatively. She said, "It won't make it great, but it's a little bit better than what we've got now."

Councilor Ortiz asked if he understood Councilor Heldmeyer's intention to be that, speaking hypothetically, if he were to buy a unit from Mr. Wiviott and then made improvements to it and sold it to Councilor Coss, he would have to inform the City when he transferred title.

Councilor Heldmeyer responded, “You don’t have to inform anyone. You have to inform the developer or the management company.” She said Mr. Wiviott indicated in earlier testimony that he does this already when things change hands. Continuing with the hypothetical situation, she said, “So if you have an office, and you sell it to David and he’s a doctor, and it’s a medical office, which is a more intense use under the code and requires more parking, it is the responsibility of the developer or the management company to notify the City that that change has taken place, whether or not a building permit is needed for that change.”

Councilor Heldmeyer additionally clarified that she was speaking to a change of use.

The amendment was accepted as friendly.

The motion to deny the appeal, as amended, passed on the following Roll Call vote:

For: Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Coss; Councilor Lopez; Councilor Ortiz.

Against: Councilor Chavez; Councilor Heldmeyer.

In voting against, Councilor Heldmeyer said, “The Lofts was well represented by legal counsel when they wrote the stipulated settlement agreement, and to say now that the wording is ambiguous or it’s not really what they meant seems to be more than a little disingenuous.”

COMMUNICATIONS FROM THE GOVERNING BODY

Councilor Lopez

Councilor Lopez distributed a proposed ordinance regarding amendments to Chapters 21, 22 and 25, creating a new section regarding utility billing, and two resolutions regarding: 1) increasing housing in the downtown area; and 2) sober driving during graduation season.

Councilor Lopez asked the Mayor to keep the Plaza Task Force working to evaluate all of the traffic measures and to look at the ADA complaints made about the Plaza.

Councilor Lopez noted that the Council passed a resolution calling on the City to take another look at the apartment complexes on one meter that were being billed at the commercial rate, and to find a way that the apartment complexes

could be billed at residential rates. She commented that there are a lot of angry constituents who were promised that this would happen by the end of the 2002.

Councilor Ortiz

Councilor Ortiz said a code enforcement position remains unfilled and Councilors and the public are barraging Code Enforcement about code violations, so he asked Mr. Romero to report back to Finance tomorrow on the status of filling the position.

Mayor Delgado

Mayor Delgado said he understood Councilors and Civic Center Task Force members, as well as Prof. Haywood Sanders, have agreed to meet in a study session on May 21 at 7:00 p.m. at the GCCC. [PUC members agreed to start their meeting at 4:30 that day so it could conclude in time for the study session.]

Councilor Heldmeyer

Councilor Heldmeyer and Councilor Chavez distributed a resolution seeking possible alternatives to the library problem on the Southside. She asked that it go to Finance and Public Works and move through the system as quickly as possible so it can be considered with the CIP budget.

Councilor Chavez

Councilor Chavez noted that ordinance requires that commercial entities retrofit their toilets by December or January, and asked Mr. Romero to get Code Enforcement on that.

Councilor Chavez announced that tomorrow the competition for Don Diego de Vargas and La Reina will take place tomorrow at 7:00 p.m. at Sweeney Center. He said the *Baile* and the announcement will be on May 3, also at Sweeney at 7:00 p.m.

Councilor Bushee

Councilor Bushee asked Mr. Romero to keep her, Councilor Chavez and Councilor Ortiz informed on the catchment and water harvesting issue.

ADJOURN

Its business completed, the Governing Body adjourned the meeting at approximately 12:45 a.m.

Approved by:

Mayor Larry A. Delgado

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully Submitted:

Judith S. Beatty, City Council Reporter